(22,263)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 106.

THE ARIZONA COPPER COMPANY, LIMITED, APPELLANT,

vs.

WILLIAM ALLEN GILLESPIE.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 15, 1912.

a In the Supreme Court of the Territory of Arizona.

No. 1052.

THE ARIZONA COPPER COMPANY, LIMITED, a Corporation, Appellant,
vs.
WILLIAM ALLEN GILLESPIE, Appellee.

On appeal from the District Court of the Fifth Judicial District of the Territory of Arizona in and for the County of Graham.

Kibbey, Bennett & Bennett and M. J. Egan, Esq., attorneys for Appellant.
Thos. Armstrong, Jr., Esq., attorney for appellee.

Bt it remembered that on to-wit: the sixteenth day of March, 1908, came the appellant in the above entitled cause, by its attorneys, Mr. Walter Bennett and Mr. M. J. Egan, and filed in the clerk's office of said court, in said entitled cause, a certain Judgment Roll in words and figures following, to-wit:

1 In the District Court of the Fifth Judicial District of the Territory of Arizona in and for the County of Graham.

WILLIAM ALLEN GILLESPIE, Plaintiff,
vs.
THE SHANNON COPPER COMPANY, a Corporation; THE ARIZONA Copper Company, Limited, a Corporation, and The Arizona Copper Company, a Corporation, Defendants.

Complaint.

Comes now the plaintiff by his attorneys, Armstrong and Lewis, and for his cause of action alleges:

I.

That plaintiff is now and at all times hereinafter mentioned has been a resident of the County of Graham and Territory of Arizona.

That the defendant, the Shannon Copper Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of
2 business in the City of Dover, County of Kent and State of Delaware.

That the defendant, The Arizona Copper Company, Limited, is a corporation duly organized and existing under and by virtue of the laws of Scotland, with its principal place of business in Scotland.

That the defendant, The Arizona Copper Company is a corporation duly organized and existing under and by virtue of the laws of

the Territory of Arizona, with its principal place of business in the City of Clifton, County of Graham and Territory of Arizona.

II.

That the Gila River rises in the Territory of New Mexico and flows thence through a generally mountainous country through the County of Graham and other counties in the Territory of Arizona, in a westerly direction into the Colorado River, at or near the City of Yuma in the Territory of Arizona.

That the San Francisco River is an affluent of the said Gila River, emptying its waters into the said Gila River at or near the City of Clifton aforesaid, and above the head of the Montezuma and other canals hereinafter described. That Chase Creek is an affluent of the said San Francisco River, emptying its waters into the said San Francisco River above the said City of Clifton; that each and all of said streams are public streams within the said County of Graham and the waters thereof are applicable to the purposes of irrigation and domestic use.

That the waters of said several streams were, at all times prior to the commission of the acts of defendants hereinafter com-
3 plained of, pure, clear, and free from substances poisonous in their nature and injurious to plant life and detrimental to the fertility of the farming lands hereinafter described, and of a nature and character well suited to the purposes of irrigation and domestic use.

III.

That the plaintiff is the owner in fee simple, and the occupant of all that portion of the south one-half of the northwest one-quarter of Section thirteen lying and being south of the Union Canal, and the north one-half of the southwest one-quarter of said section, and the southeast one-quarter of the southwest one-quarter of said section, and the west one-half of the southeast one-quarter of said section, and that certain tract of land in said section commencing at a point being the south west corner of the east one-half of the southeast one-quarter of said section, thence in an easterly direction along the south line of said section 405 feet to a point, thence in a northerly direction parallel with the east said section line 1563 feet to a point, thence in an easterly direction parallel with the south said section line 37¾ feet to a point, thence in a northerly direction parallel with the east said section line 1064½ feet to a point on the north line of said southeast quarter of said section, thence along said last mentioned north line in a westerly direction 442¾ feet to a point, being the northwest corner of the east half of said quarter section, thence in a southerly direction along the west line of said east half of said quarter section to the place of beginning, all of said land being in Township 7 South, Range 26 East of the Gila & Salt River Base and Meridian, and in the County of Graham and Territory of Arizona, and containing in all 276 acres, more
4 or less; and plaintiff alleges upon information and belief that heretofore, to-wit: In the year 1872 the predecessors in interest

of said plaintiff appropriated of the public waters of said Gila River, and diverted by and through the Montezuma Canal hereinafter described, 140 inches of water, miners' measurement, and applied said water to said land for the purpose of the irrigation thereof and the cultivation of grain, alfalfa, trees, vines, melons, vegetables and other agricultural products, and for drinking and domestic use, in connection with said premises; that thereafter the predecessors in interest of said plaintiff and said plaintiff continued and now continues to so divert and use said quantity of water upon and in connection with the said land for the purposes aforesaid.

IV.

That the said Montezuma Canal, by and through which this plaintiff diverts the water appropriated for use upon said land as aforesaid, at all the times mentioned herein, headed and now heads at a point upon the bank of said Gila River at or near the southwest corner of the northeast quarter of the northeast quarter of Section 17, Township 7 South, Range 26, East, G. & S. R. B. & M., in said Graham County at a distance of about 25 miles below the confluence of the said San Francisco River and the said Gila River; that commencing at said head of the said Montezuma Canal and extending out into and across the said Gila River, was at all the times mentioned herein and now is maintained a dam for the purpose of diverting the waters of said Gila River into said canal; that said Montezuma Canal was at all the times mentioned herein and is now of a capacity sufficient to, and did and now does divert and carry 3,000 inches of water, miners' measurement, of, out of and from the said Gila River, and at all of said times said canal extended and now extends out through the farming lands of the valley commonly known and called the Upper Gila Valley, a distance of 13½ miles, all within the said County of Graham; that said canal at all the times mentioned herein carried and now carries the public waters of said Gila River for the irrigation of more than 3750 acres of land to which said water was and now is appropriated, diverted and applied by the owners and occupants thereof for agricultural purposes and drinking and domestic uses in connection therewith, amongst others, to the lands of this plaintiff; that said canal and dam was at all the times mentioned herein, and now is maintained by the owners of said lands and this plaintiff, for the uses and purposes aforesaid.

V.

And this plaintiff further alleges that in the said Upper Gila Valley and County of Graham and from a point on said Gila River at or near eighteen miles below the confluence of said San Francisco and said Gila Rivers, to a point fifty-three miles below said last named point, numerous irrigation ditches, amongst others, said Montezuma Canal, were taken out of said Gila River long prior to the commission of the acts of defendants hereinafter complained of, by divers persons who were then and are now the owners and occu-

pants of irrigable lands lying upon either side of said Gila River, and by means of said ditches the public waters of river were ever since and now are appropriated, diverted, and applied to more than twenty-three thousand acres of irrigable lands so situated
6 under said canals and occupied by persons entitled to the use of said waters, amongst others this plaintiff; and the said lands theretofore desert and unproductive were reclaimed and were made to and do now produce alfalfa, grains, vegetables, melons, fruits, trees and vines; and plaintiff further alleges that at all the times hereinafter mentioned said ditches have been and are now maintained and said public water of said Gila River used upon the aforesaid land for the irrigation thereof and the cultivation of valuable crops as aforesaid, and for domestic and drinking purposes in connection therewith; and plaintiff further alleges that as a result of the use of said public waters of said Gila River as aforesaid, a rich and prosperous farming community has been established upon the lands aforesaid, supporting the towns of Solomonsville, of Safford and of Thatcher, in all a community of more than eight thousand persons.

VI.

And plaintiff further alleges that in the mountains through which the said Gila River and its said affluents flow, and in the neighborhood and surrounding the town of Clifton aforesaid, and the towns of Morenci and Metcalf, and within the said County of Graham, are numerous deposits of copper ores to an extent to this plaintiff unknown, but this plaintiff upon information and belief alleges that said defendants have developed blocked out and exposed more than one hundred million tons of copper ore upon properties owned by them, which can and will be reduced and treated by the said defendants as hereinafter alleged; that for many years last past said ores have been mined, reduced and treated by the said defendants to an extent and amount to this plaintiff unknown,
7 but this plaintiff alleges upon information and belief that vast quantities and more than fifteen millions of tons of ore have been by said defendants mined, reduced and treated as hereinafter set forth; that for the purpose of reducing and treating the said ores so mined as aforesaid, the said defendant companies have each and all established upon the banks of said San Francisco River and said Chase Creek and upon the sides of the canons debouching into said last named streams, leachers, smelters and concentrators of a capacity sufficient to, and which now actually reduce and treat, as plaintiff is informed and verily believes and states the fact to be, more than 100,000 tons of copper ore each and every month; that in the treatment of said ores by the said defendants in the mills operated by the said defendants as aforesaid, the said ores are crushed and mixed with water, which said water is diverted and taken in its pure and natural condition from the affluents of the said Gila River by the said defendants and applied by the said defendants to said use, to the amount of 1200 inches, miners' measurement; that said ores when so crushed and mixed with water as aforesaid, are deprived of their mineral content, which this plain-

tiff is informed and believes and alleges the fact to be is not to exceed five per centum of the whole thereof and the residue and remainder thereof, mixed with water as aforesaid, consisting of finely pulverized rock, slime and coarser sediment, is by the said defendants returned to the said streams and thence carried by and through the said streams and irrigation ditches to and upon the lands of this plaintiff and others like situate.

VII.

8 And this plaintiff further alleges that although the said slimes, tailings and sediments so deposited by the said defendants in said streams as aforesaid are deposited from separate and distinct mills operated by the several defendants and in separate and distinct places, yet, nevertheless said slimes, tailings and sediments from said several mills owned and operated by said several defendants, become commingled in an indistinguishable mass in the waters of the said Gila River and its said affluents above the head of the said Montezuma Canal and above the head of the uppermost of said several canals, and this plaintiff alleges the fact to be that each of said defendants, by and through their several mills, deposits slimes, tailings and sediments in the said affluents of the said Gila River and thereby contributes to the injury hereinafter complained of by this plaintiff.

VIII.

And this plaintiff further alleges that all of said mills so erected by the defendants as aforesaid were erected by, and said water so appropriated, diverted and used by the said defendants in the milling uses as hereinbefore alleged, was appropriated, diverted and used for said milling purposes by said defendants and each of them long subsequent to the said appropriation of water by this plaintiff and others owning and occupying land in the said farming community aforesaid, and with full knowledge on the part of said defendants and each of them of the prior appropriation, diversion and use by the plaintiff and said others in said farming community, of said waters of said Gila River and its said affluents in its pure and unpolluted state.

IX.

9 And plaintiff further alleges upon information and belief that said defendants have by, through and from their mills as aforesaid, deposited in said Chase Creek, tailings, slimes and sediments, which said tailings, slimes and sediments so deposited by the defendants as aforesaid, have filled and now fill the bed of said Chase Creek to a depth of from twelve to fifteen feet; that said defendants have, by, through and from their said mills as aforesaid, deposited in the said San Francisco River and also into said San Francisco River by and through the said Chase Creek and the several canons debouching into said Chase Creek and into said San Francisco River, tailings, slimes and sediments, which

said tailings, slimes and sediments, so deposited by the defendants as aforesaid, have filled and do now fill the bed of said San Francisco River to a depth of three to five feet; that said defendants have, by, through and from their said mills as aforesaid, deposited by and through the said Chase Creek, the said canons and the said San Francisco River, in the bed of the said Gila River below the mouth of the said San Francisco River and above the head of the uppermost of the said irrigation canals, tailings, slimes and sediments, which said tailings, slimes and sediments so deposited by the defendants as aforesaid, have filled the bed of the said Gila River to a depth of about four feet, and this plaintiff further alleges that the amount of said tailings, slimes and sediments deposited by the defendants in the said Chase Creek, the said canons, the said San Francisco River and the said Gila River, is increasing, and the said defendants are now increasing the amount of the deposits of tailings, slimes and sediments in said creeks, canons and rivers, and said defendants threaten to, and will, unless restrained by the order of this Court, continue the deposit as
10 aforesaid and will increase the said deposits therein. And this plaintiff further alleges that said slimes, tailings and sediments so deposited in said creeks, canons and rivers are composed of inert substances injurious to and destructive of the fertility of the soil of said lands of the Upper Gila Valley irrigated by the waters of said Gila River, amongst others, the lands of this plaintiff, and that said slimes, tailings and sediments so deposited in the beds of the said canons and streams by the defendants as aforesaid, have been conducted and carried from the said Gila River through the said canals to and upon the said lands of the said Upper Gila Valley, irrigated as aforesaid, amongst others, to and upon the said land of this plaintiff, to the injury of the said land and the impairment of the productiveness thereof, and to the damage of the owners of the said lands, amongst others, this plaintiff. And this plaintiff further alleges that by reason of the deposits and continuance of deposits of slimes, tailings and sediments by defendants as aforesaid, in the said Gila River and its affluents, the said slimes, tailings and sediments are rapidly encroaching upon and will rapidly encroach upon the heads of the said irrigating canals and particularly the head of the said Montezuma Canal, and will, unless the deposit thereof by the defendants is restrained by the order of this Court, destroy the heads and dams of said canals, and particularly the head and dam of the Montezuma Canal to the great injury and damage of the owners of lands thereunder, and particularly to the damage of this plaintiff; and this plaintiff further alleges that by reason of the deposits of slimes, tailings and sediments by the defendants as aforesaid, the lands under the said canals, and particularly the lands of
11 this plaintiff, are exposed to damage and destruction by the carrying out from the bed of the said Gila River and its said affluents of the slimes, tailings and sediments deposited therein by defendants as aforesaid to and upon the said lands, which said damage and liability to destruction is constantly increasing as the amount of slimes, tailings and sediments so deposited by the defendants as

aforesaid increases; and this plaintiff alleges that unless said deposit of tailings, slimes and sediment, by the defendants, in said rivers and their said affluents, is restrained by the order of this Court, the fertility of said lands under the said canals, and particularly the fertility of said lands of this plaintiff, will be wholly destroyed to their and his great damage.

X.

And this plaintiff further alleges that the said defendants deposit in the said Gila River and its affluents, slimes and tailings of exceeding fineness, impregnated with copper, acids and other chemicals, which said slimes and tailings impregnated with acid, other chemicals and copper so deposited by the said defendants as aforesaid, at all times foul and poison the public waters of the said Gila River and destroy the fish therein and render the said water, which would otherwise be pure and wholesome, unfit for ordinary drinking and domestic use, to the damage of the public and of this plaintiff.

XI.

And this plaintiff further alleges that the said defendants deposit in the said Gila River and its said affluents, slimes and tail-
12 ings as aforesaid, composed of finely pulverized rock, which at all times foul the public waters aforesaid, and particularly the waters appropriated, diverted and used and now being diverted and used by this plaintiff upon the said lands of plaintiff aforesaid; that the usefulness of said waters, so fouled by the defendants as aforesaid, for irrigation, is greatly impaired in this, that the more finely pulverized materials so deposited in said waters by said defendants, consisting of finely powdered slate, limestone and other inert substances, are carried in suspension in the waters of the said Gila River and its said affluents, through the head of the said Montezuma Canal to and upon the land of plaintiff hereinbefore described, and plaintiff alleges that said tailings and slimes are deposited from said water in the usual course and practice of irrigation, upon said lands and fields of said plaintiff, forming thereon a coating of inert matter, impervious to air and not readily soluble in water, which substance binds around the roots of alfalfa and grains now and heretofore growing upon said land, preventing the proper and usual growth thereof and lessening the yield and killing the said crops to the damage of this plaintiff; and this plaintiff further alleges that said inert matter so deposited in irrigation, prevents the growth upon said lands of tender vegetables, vines, and melons, to his damage; that said substances so deposited as aforesaid, are wholly inert and that the constant application thereof to the said land decreases the fertility thereof, to the great and increasing injury of plaintiff. And this plaintiff further alleges that the said substances so deposited by defendants as aforesaid increase the amount of water necessarily used and the number of irrigations required for the proper
13 cultivation of his said crops upon his said land to the great and increasing injury of plaintiff.

XII.

And plaintiff further alleges that the injuries complained of by plaintiff herein are continuously and constantly increasing; that plaintiff has no adequate remedy at law for the redress of the said injuries caused him by the said defendants, in this, that the damages caused to plaintiff by the acts of defendants as aforesaid are of a nature not readily susceptible of proof in an action at law for damages; that said injuries so caused by defendants as aforesaid are recurrent and in their ultimate effect irreparable; that the defendants threaten to and will, unless restrained by the order of this Court, continue to deposit and to increase the deposit of slimes, tailings and chemicals as hereinbefore alleged to the damage of this plaintiff.

Wherefore plaintiff prays that an injunction issue to the defendants and each of them perpetually restraining them and each and every of them from depositing in the waters of the said Gila River, the said San Francisco River, the said Chase Creek and in the affluents of any and all of said streams any slimes, tailings, concentrates and chemicals.

That the plaintiff be decreed such other and further relief as to the Court shall appear just and meet in the premises and costs incurred and expended herein.

ARMSTRONG & LEWIS,
Attorneys for Plaintiff.

TERRITORY OF ARIZONA,
County of Graham, ss:

William Allen Gillespie, being first duly sworn, on oath
14 deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge excepting as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

W. A. GILLESPIE.

Subscribed and sworn to before me this 20th day of September, 1906.

[SEAL.] GEORGE H. SMALLEY, *Clerk.*

Filed April 20th, 1906.

Here follows the Summons and a Stipulation as to time to answer, copies of which are omitted by direction of attorneys for appellant.

Then follows the Answer of the Shannon Copper Company filed December 20, 1906, but as plaintiff subsequently dismissed his complaint as to that company, and no judgment was rendered against it, the Answer of the Shannon Copper Company is omitted by direction of attorneys for appellant.

Then follows the Answer of the Arizona Copper Company, Ltd., copy of which is omitted by direction of attorneys for appellant, an Amended Answer having been filed.

Then follows the Answer of the Arizona Copper Company, filed

December 20, 1906, but as it was a nominal party only, and no relief was asked or judgment rendered against it, its answer is omitted by direction of attorneys for appellant.

15 (Title of Court and Cause).

Amended Answer.

Comes now the defendant, the Arizona Copper Company, Ltd., and for this, its Amended Answer:

I.

Demurs to the plaintiff's complaint herein and shows that the said complaint does not state facts sufficient to constitute any cause of action against this defendant.

II.

And this defendant, demurring specially to the plaintiff's complaint, shows that it appears upon the face of the complaint that the alleged wrongs complained of were committed and are being committed by the said several defendants severally and independently and not jointly, and that therefore there is a defect of parties
16 to this action, in this, that there is a misjoinder of parties defendant to this action and that the several defendants are improperly joined as defendants in this action.

III.

And should the above demurrer be overruled, this defendant further answering said complaint admits the residence of the plaintiff and the corporate character of this defendant to be as alleged in paragraph I of plaintiff's complaint.

IV.

Admits the allegations of the first two clauses of paragraph II of plaintiff's complaint, and denies that the waters of the streams mentioned in plaintiff's complaint were, prior to the alleged acts complained of, pure, clear, or free from substances poisonous in their nature or injurious to plant life or detrimental to the fertility of the farming lands described in plaintiff's complaint or of a nature or character well suited to the purposes of irrigation or domestic use.

V.

That this defendant has no knowledge as to the facts alleged in paragraphs III and IV of plaintiff's complaint and therefore denies the same and asks that plaintiff may be required to make strict proof thereof.

VI.

This defendant, further answering, admits that it is engaged in the mining and reduction of copper ore at or near the town of
17 Clifton, Arizona; that its concentration and reduction works in which said ores are treated and reduced are situated upon or adjacent to the streams and canons debouching into the affluents of the said Gila River and that a portion of the tailings and waste material from said reduction works is carried by the water used in said reduction works into the said streams and canons, and thence into the Gila River; but this defendant denies that the said tailings and waste material which are so deposited by this defendant and which so find their way into the waters of the Gila River are in such quantity or of such quality as to render the waters of said Gila River unfit for domestic use or for the irrigation of the lands of the plaintiff, or injurious to or destructive of the fertility of the soil to which the said waters of the Gila River are applied, but on the contrary this defendant is informed and believes and therefore so states the fact to be that the said waste material and tailings from the reduction works of this defendant which find their way into the said Gila River and thence to the lands irrigated therefrom are in such quantity and of such quality that the lands irrigated therefrom with proper cultivation are not damaged thereby, but are greatly benefited and rendered more fertile and productive.

VII.

And this defendant denies that the said waste material and tailings from the reduction works of this defendant are deposited in and are encroaching upon the heads of the irrigation canals, diverting water for irrigation from said Gila River, and denies that the said materials and tailings are about to or will injure or destroy or in any way obstruct the heads or dams of said canals
18 as alleged in paragraph IX of plaintiff's complaint.

VIII.

And this defendant denies that any waste material, slime or tailings deposited in the said Gila River or its tributaries are impregnated with copper, acids or other chemicals, and denies that the said waste materials and tailings from this defendant's reduction works poison the waters of said Gila River or render the said waters thereof unfit for drinking or domestic use, as alleged in paragraph XI of plaintiff's complaint.

IX.

And this defendant denies that the plaintiff has suffered any damage or injury by reason of the deposit of waste materials and tailings from the reduction works of defendant in the waters of the Gila River or its tributaries, and denies that the same are constantly increasing or increasing at all, and denies that plaintiff has no adequate remedy at law, and denies that the damages suffered by plaintiff, if plaintiff has suffered any damages, are not readily susceptible of

proof in an action at law and denies that this defendant has caused any damages to plaintiff which are recurrent or that their ultimate effect is or will be irreparable.

X.

This defendant, further answering plaintiff's complaint, denies each and every allegation therein contained not hereinbefore specifically admitted or denied.

XI.

Furthering answering plaintiff's complaint, this defendant
19 alleges that this defendant for a long time prior to the commencement of this action, to wit, for 20 years last past, has been operating its mining and reduction works at the same place and in the same manner in which it is now operating the same; that the amount of waste material and tailings from said works which now find their way from said works into the waters of the Gila River and its tributaries is practically of the same quality and character, and less in quantity than the same has been during the whole of said period.

That this defendant has expended large sums of money in a bona fide effort to impound said waste material and tailings, to-wit, the sum of one hundred thousand dollars, and that this defendant is now expending other large sums of money in a bona fide effort to reduce the amount of such waste material and tailings so finding their way from the reduction works of defendant to the waters of said Gila River, and intends to and will in every practical way use its best efforts to reduce to a minimum the amount of said waste materials and tailings which find their way from its said reduction works to the waters of said Gila River, and that by the money and labor already expended by this defendant the amount of said waste and tailings so finding their way into the waters of the Gila River from the works of this defendant has greatly diminished and is now constantly diminishing, and will, by reason of the said efforts of this defendant, constantly continue to diminish.

XII.

This defendant, further answering plaintiff's complaint, alleges that for many years last past, to-wit, for more than twenty years, it
has been in the mining and reduction of copper ore on or
20 near the upper branches and affluents of the Gila River; that during all of said times the mines and reduction works of this defendant have been and now are so located that it is impossible to operate the same and at the same time prevent some portion of the tailings and fine sediment held in solution in the water from said works from finding its way into the waters of the Gila River. That this defendant is now using every reasonable effort to reduce the amount of such sediment and tailings from said works which find their way into the waters of said Gila River. That if this defendant should be restrained and enjoined by this Court from so operating its mines, smelters and reduction works aforesaid except so as to

prevent any portion of said tailings and sediment therefrom from flowing and finding its way into the waters of the said Gila River, this defendant would be compelled to shut down all of said mining, smelting and reduction works and cease from operating the same.

That this defendant has invested a very large amount of money in the development of said mines and in the installation and equipment of the smelting and reduction works used by this defendant in the smelting and reduction of the product of said mines, and has continually added to and increased its said plant, and the volume of its operations since the year of 1882 to the knowledge of the plaintiff and without his complaint or protest.

That at the present time this defendant in its many operations, smelting and reduction works, gives employment to a large number of men, to-wit, about two thousand, and that a still larger number, to-wit, as this defendant is informed and believes, twelve thousand people, are directly dependent upon the operation of said
21 works for a livelihood, and that the shutting down of said mining operations, and smelting and reduction works, by reason of such restraining order and injunction, would cause great loss and suffering to the employees of this defendant and those depending upon them, and great financial loss and irreparable damage to this defendant, and that such loss and suffering and damage would be so vastly greater than the loss or damage to plaintiff, if any, by reason of the operation of said works, as alleged in said complaint, as to be out of all proportion thereto.

Wherefore, this defendant prays that this action may be dismissed as to this defendant and that this defendant have judgment for its costs and disbursements herein.

M. J. EGAN,
WALTER BENNETT,
Attorneys for Defendant Arizona Copper Company, Ltd.

TERRITORY OF ARIZONA,
County of Graham, ss:

M. J. Egan, being first duly sworn, on his oath says: That he is one of the attorneys of said defendant, The Arizona Copper Company, Ltd., and makes this affidavit for and on behalf of this defendant; that he has read the foregoing answer and knows the contents thereof and that the matters and things therein stated are true of his own knowledge, except such as are stated on information and belief, and as to those matters he believes it to be true.

M. J. EGAN.

Subscribed and sworn to before me this 18th day of April, 1907.

W. R. CHAMBERS,
Clerk District Court.

Filed April 18th, 1907.

22 Here follows The Shannon Copper Company's motion to strike, copy of which is omitted by direction of attorneys for appellant.

(Title of Court and Cause Omitted.)

Motion to Strike.

Comes now the defendant, The Arizona Copper Company, Ltd., and moves the Court to strike from the plaintiff's complaint herein the following paragraphs and parts of paragraphs therein:

Strike out paragraph 4 of said complaint, for the reason that the matter therein stated is irrelevant and immaterial and is surplusage.

Strike out paragraph 5 of said complaint for the reason that the matter therein stated is irrelevant and immaterial and is surplusage.

Strike out the words "and others like situate" at the end of paragraph 7 of said complaint, for the reason that the same is irrelevant and immaterial.

Strike out the words "and others owning and occupying lands in said farming community aforesaid" from paragraph 8 of said
23 complaint, for the reason that the same is irrelevant and immaterial and is surplusage.

Strike out from said complaint the whole of paragraph 9 for the reason that the matter therein stated is irrelevant and immaterial and surplusage, and is a repetition of matter elsewhere alleged in said complaint.

M. J. EGAN,
WALTER BENNETT,
Attorneys for Defendant Arizona Copper Co., Ltd.

Filed April 17th, 1907.

Here follows an Agreement between The Shannon Copper Company and Wm. A. Gillespie and others; Findings of Fact proposed by Defendant The Arizona Copper Company, Ltd.; Findings of Fact and Conclusions of Law signed by the trial Judge; copies of which are omitted by direction of attorneys for appellant.

(Title of Court and Cause.)

Judgment.

This cause coming on regularly for trial before the Court without a jury, Hon. F. S. Nave presiding, and the plaintiff appearing by his attorneys, Messrs. Armstrong & Lewis, and the said defendants,
24 The Shannon Copper Company, a corporation; The Arizona Copper Company, Limited, a corporation, and The Arizona Copper Company, a corporation, appearing by their attorneys, Walter Bennett and M. J. Egan, Esqs., and upon motion of plaintiff's attorney the complaint having been dismissed as against The Shannon Copper Company and The Arizona Copper Company and the said cause having been continued for trial as against The Arizona Copper Company, Limited a corporation, and the Court having heard and considered the evidence offered by the respective parties

and the arguments of counsel, and having made and filed its Findings of Fact and Conclusions of Law herein, it is, by the Court, ordered, adjudged and decreed that the complaint of plaintiff be, and the same hereby is, dismissed as against the defendant, The Shannon Copper Company, and that said Shannon Copper Company do have and recover of the said plaintiff the sum of $—, its costs and disbursements incurred herein.

And it is further ordered, adjudged and decreed that the complaint of plaintiff be, and the same hereby is, dismissed as against The Arizona Copper Company, and that said The Arizona Copper Company do have and recover of said plaintiff the sum of $—, its costs and disbursements incurred herein.

And it is further ordered, adjudged and decreed that the
25 defendant, The Arizona Copper Company, Limited, its agents, servants and attorneys, are hereby perpetually enjoined and restrained from in any wise or in any manner depositing, or suffering or permitting to be deposited, or suffering or permitting to flow into the waters of the said Gila River, or into said San Francisco River, or said Chase Creek, in such manner that they may be carried into or enter into the waters of said Gila River, any slimes, slickens or tailings; this judgment to become operative May first, A. D. 1908, and not prior thereto; and that the said plaintiff do have and recover of said defendant, The Arizona Copper Company, Limited, the sum of $85.30, his costs and disbursements incurred herein.

Dated at Solomonsville, Arizona, this fifth day of November, 1907.

FREDERICK S. NAVE, *Judge.*

Filed January 4th, 1908.

(Title of Court and Cause.)

Motion for New Trial.

I.

Comes now the defendant, The Arizona Copper Company, Limited, a corporation, and moves the Court to set aside its findings and judgment in the above-entitled cause and to grant this defendant a new trial thereof upon the following grounds:

The Court erred in admitting incompetent and improper evidence offered by the plaintiff and objected to by the defendant.

II.

The court erred in refusing to admit proper evidence offered by this defendant.

III.

The findings of the Court are not supported by the evi-
26 dence in the case.

IV.

The findings of the Court are contrary to the weight of the evidence.

V.

The judgment of the Court is not supported by the findings of fact signed and filed by the Court.

VI.

The judgment of the Court is not supported by the evidence in the case.

VII.

The judgment of the Court is against the weight of the evidence and is contrary to the law of the case.

VIII.

The Court erred in adjudging and decreeing that this defendant be permanently enjoined and restrained from in any wise or in any manner disposing of, or suffering or permitting to be disposed, or suffering or permitting to flow into the waters of the Gila River, the San Francisco River or Chase Creek, any slime, tailings or sediment.

IX.

The Court erred in entering judgment for the plaintiff against this defendant for costs.

M. J. EGAN,
WALTER BENNETT,
Attorneys for Defendant Arizona Copper Co., Ltd.

Filed November 5th, 1907.

27 Here follows Plaintiff's Memorandum of Costs and Disbursements; and a Stipulation in regard to approval and certification by the trial Judge of the reporter's notes of the testimony as a bill of exceptions; copies of which are omitted by direction of attorneys for appellant.

28 *Minute Entries.*

APRIL 17, 1907.

In the District Court of the Fifth Judicial District of the Territory of Arizona in and for the County of Graham, April, 1907, Term.

WEDNESDAY, *April* 17, 1907.

Present:

Hon. Frederick S. Nave, Judge.
Lee N. Stratton, Esq., District Attorney.
A. A. Anderson, Sheriff.
W. R. Chambers, Clerk.
R. W. Sturgis, Reporter.

Order Opening Court.

Court was duly opened by the sheriff at 11:00 o'clock a. m., of this day, pursuant to recess.

Be it remembered, that on said day, the following order was made and entered, inter alia, in a cause wherein W. A. Gillespie is plaintiff, and The Shannon Copper Company et als. are defendants, which said order is in words and figures, following, to-wit:

Order Taking Motion and Demurrer Under Advisement.

1532.

W. A. GILLESPIE
vs.
SHANNON COPPER CO. et als.

29 And now comes Walter Bennett, Esq., of counsel for the defendants, and presses their motions to strike out certain portions of the complaint, and also the demurrer herein, and Thomas Armstrong, Jr., and George Lewis, Esq., appearing as counsel for the plaintiff, the said motions and demurrer are argued by the respective counsel and for consideration by the Court the same is taken under advisement.

Be it remembered, that on, to-wit, the 18th day of April, 1907, the same being one of the regular juridical days of the April, 1907, term of said Court, the following orders were made and entered, inter alia, in said cause in said Court, which said orders are in words and figures following, to-wit:

Call of Calendar. Setting of Cases for Trial.

1532.

W. A. GILLESPIE
vs.
SHANNON COPPER CO. et als.

It is hereby ordered that this case be and the same is hereby set for trial for Wednesday, May 1st, 1907.

Be it remembered, that on to-wit, the 19th day of April, 1907, the same being one of the regular juridical days of the April, 1907, term of said Court, the following orders were made and entered, inter alia, in said cause in said Court, which said orders are in words and figures following, to-wit:

Motion to Strike Denied.

1532.

W. A. GILLESPIE
vs.
THE SHANNON COPPER — et al.,

30 The motion to strike from the complaint certain portions thereof having been heretofore argued before the Court and

by the Court taken under advisement, the Court announces that the motion is, and it is hereby ordered that the said motion to strike be and the same is hereby denied.

Demurrer Overruled.

1532.

W. A. GILLESPIE
vs.
SHANNON COPPER Co. et als.

The demurrer herein having heretofore been argued by the respective counsel and taken under advisement by the Court, it is now ordered that the demurrer to the complaint be and the same is hereby overruled.

Be it remembered, that on to-wit, the 1st day of May, 1907, the same being one of the regular juridical days of the April, 1907, term of said Court, the following orders were made and entered, and proceedings had and recorded, inter alia, in said Court in said cause, which said orders and proceedings are in words and figures following, to-wit:

Dismissal as to One Defendant.

1532.

W. A. GILLESPIE
vs.
ARIZONA COPPER Co. et al.

On motion of the plaintiff it is hereby ordered that this case be and the same is hereby dismissed as to The Shannon Copper Company as per the agreement and stipulation now on file.

Trial.

1532.

W. A. GILLESPIE
vs.
ARIZONA COPPER Co. et al.

31 This being the hour for trial herein, comes now the plaintiff in person and by counsel, Thos. Armstrong, Jr., and George Lewis, his counsel, and the defendants by their counsel, M. J. Egan, Esq., and Walter Bennett, Esq., and the trial herein is ordered to proceed; thereupon the plaintiff calls as a witness in his behalf R. J. Young, and being sworn, he is examined and cross-

examined; thereupon the plaintiff offers in evidence a certain map, which is marked "Plaintiff's Exhibit A," and is admitted; thereupon plaintiff offers in evidence another certain map, which is marked "Plaintiff's Exhibit B," and is admitted; thereupon George A. Olney is called as a witness in behalf of the plaintiff and he is first duly sworn and is examined and cross-examined; thereupon the plaintiff offers certain evidence, being a deposit of a certain kind of rock or slime, which is marked "Plaintiff's Exhibit C," and is admitted; thereupon the Court suspended the trial herein until 2:00 o'clock p. m.

Trial Resumed.

1532.

W. A. GILLESPIE

vs.

THE ARIZONA COPPER CO. et al.

The plaintiff present by counsel as aforesaid, and the defendants present by counsel as aforesaid, it is ordered that the trial herein be resumed; thereupon the plaintiff recalls George A. Olney as a witness in his behalf and he is examined and cross-examined *and cross-examined;* thereupon M. J. Egan is caled as a witness in behalf of the plaintiff and after being first duly sworn he is examined and cross-examination waived; thereupon the plaintiff calls Andrew
32 Kimball as a witness and after being first duly sworn he is examined and cross-examined; thereupon W. A. Gillespie is called as a witness in his own behalf, and being first duly sworn, he is examined and cross-examined; and thereupon arising from said cross-examination, the defendants offer a certain bulletin issued by the University of Arizona, which is admitted and marked "Defendant's Exhibit 1;" and thereupon Frank Tyler, Turner West, A. F. West, and C. M. Layton are called as witnesses in behalf of the plaintiff, and each being first duly sworn, they are each examined and cross-examined; thereupon the hearing herein is continued until 9.00 a. m., Thursday, May 2nd, 1907.

Be it remembered, that on to-wit, the 2nd day of May, 1907, the same being one of the regular juridical days of the April, 1907, term of said court, the following orders were made and entered, and proceedings had and recorded, inter alia, in said Court in said cause, which said orders and proceedings are in words and figures following to-wit:

Trial Resumed.

1532.

W. A. GILLESPIE

vs.

THE ARIZONA COPPER COMPANY et al.

The plaintiff being present by his attorneys, Messrs. Armstrong & Lewis, and the defendants by their counsel, M. J. Egan, Esq., and

Walter Bennett, Esq., the trial herein is ordered to proceed; thereupon the plaintiff calls Oscar Layton, Free Hubbard, H. W. Bishop and W. W. Pace as witnesses in his behalf, and each, after
33 being first duly sworn, is examined and cross-examined; and thereupon the trial herein is ordered continued until 2:00 o'clock p. m., this day.

Trial Resumed.

1532.

W. A. GILLESPIE
vs.
THE ARIZONA COPPER CO. et al.

The plaintiff being present in person and by counsel, Messrs. Armstrong & Lewis, and the defendants by their counsel, M. J. Egan, Esq., and Walter Bennett, Esq., and the trial herein is ordered to proceed; thereupon W. A. Gillespie is recalled as a witness in behalf of the plaintiff, and he is examined and cross-examined; thereupon the plaintiff offers in evidence a certain "chunk or lump of solidified dirt, etc." which is admitted and marked "Plaintiff's Exhibit D;" thereupon Peter Andorsen is called as a witness in behalf of the plaintiff, and after first being duly sworn, is examined and cross-examined; thereupon R. J. Young is recalled as a witness in behalf of the plaintiff and he is examined and cross-examined; thereupon Richard Layton is called as a witness in behalf of the plaintiff, and being first duly sworn, he is examined and cross-examined; thereupon the plaintiff offers in evidence two bottles of liquid, which are admitted and marked respectively, "Plaintiff's Exhibit E," and "Plaintiff's Exhibit F;" thereupon on motion of the plaintiff the Court retired from the court room for the purpose of viewing some of the premises upon which it is alleged by the complaint the wrongs therein complained of are committed; thereupon the trial herein is ordered suspended and continued, until Friday, May 3rd, 1907, at 9:00 o'clock a. m.

34 Be it remembered, that on to-wit, the 3rd day of May, 1907, the same being one of the regular juridical days of the April, 1907, term of said Court, the following orders were made and entered, and proceedings had and recorded, inter alia, in said Court in said cause, which said orders and proceedings are in words and figures following, to-wit:

Trial Resumed.

1532.

W. A. GILLESPIE
vs.
THE ARIZONA COPPER CO. et al.

The plaintiff being present in person and by counsel, Messrs. Armstrong & Lewis, and the defendants by their counsel, M. J. Egan,

Esq., and Walter Bennett, Esq., the trial herein is ordered to proceed; thereupon the plaintiff rests; thereupon the defendants make orally the following motion, which it is ordered, that the clerk do enter in the minutes, to-wit: "The defendant now at the close of the plaintiff's testimony and after plaintiff has rested, moves the Court for judgment for the defendant, dismissing the plaintiff's complaint on the ground that the plaintiff has not introduced facts sufficient to support the cause of action alleged in his complaint and that in the present state of the evidence there is no evidence which would support a judgment, any judgment which the Court could enter under the pleadings in this case;" thereupon said motion is argued by the respective counsel and submitted to the Court for consideration and decision, and the Court being fully advised in the premises doth order that and the said motion is hereby denied; to which the said defendants except, and it is ordered that said exception
35 be entered, which is hereto done.

The defendants to maintain the issues on their part call Cyrel Wigmore, and being first duly sworn, he is examined and cross-examined; thereupon it is ordered that the trial herein be suspended until 1:30 p. m., and it is ordered that the Court do now stand at recess until 1:30 p. m.

Upon the reassembling of Court pursuant to recess the defendants offer in evidence two maps, which are admitted and marked respectively "Defendants' Exhibit No. 2" and "Defendants' Exhibit No. 3;" thereupon the defendants called W. E. Spaw and O. A. Resdon, who each being first duly sworn are examined and cross-examined; thereupon the defendants offer in evidence certain photographs, which are received and marked "Defendants' Exhibit 4 and 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17;" thereupon the defendants call William John Arthur, and being first duly sworn, he is examined and cross-examined; thereupon W. E. Spaw is recalled and he is examined and cross-examined; thereupon William A. Moore and John Farrell are called, and each being first duly sworn, is examined and cross-examined; and thereupon R. H. Forbes is called, and being first duly sworn, he is examined and cross-examined, thereupon the defendants offer in evidence two bulletins, which are admitted and marked respectively, "Defendants' Exhibit 18," and "Defendants' Exhibit 19;" thereupon Luther Green is called by the Court for identification of a certain "exhibit which is offered by the Court as similar to certain deposits observed by the Court in his view of the lands heretofore viewed by the Court;" which said exhibit is admitted and marked "Exhibit X;" thereupon the examination of the witness R. H. Forbes is continued;
36 thereupon the trial herein is ordered suspended until 7:30 p. m., and the Court thereupon took a recess until 7:30 p. m., and upon the reassembling of Court at 7:30 p. m., the trial herein is ordered to proceed; thereupon the defendants call E. M. Williams, George Frazier, I. N. Stevens, William Berry, George H. Caspar, J. E. Caspar, who each being first duly sworn, was examined and cross-examined, except the witness Frank G. Kepler, whose cross-examination was waived; thereupon the trial herein is ordered sus-

pended and continued until 9:00 o'clock a. m., Saturday, May 4th, 1907.

Be it remembered, that on to-wit, the 4th day of May, 1907, the same being one of the regular juridical days of the April, 1907, term of said Court, the following orders were made and entered, and proceedings had and recorded, inter alia, in said Court in said cause, which said orders and proceedings are in words and figures following, to-wit:

Trial Resumed.

1532.

W. A. GILLESPIE
vs.
THE ARIZONA COPPER COMPANY et als.

The plaintiff being present in person and by counsel, Messrs. Armstrong & Lewis, and the defendants by counsel, M. J. Egan, Esq., and Walter Bennett, Esq., the trial herein is ordered to proceed; thereupon the defendants call George A. Olney and H. W. Bishop, and they are examined and cross-examined; thereupon the defendants call Norman Carmichael, who being first duly sworn, is examined and cross-examined; thereupon R. H. Forbes and
37 W. A. Moore are recalled and they are examined and cross-examined; thereupon the defendants rest; thereupon the plaintiff in rebuttal calls J. J. Birdno, who being first duly sworn, is examined and cross-examined; thereupon R. J. Young is again called and he is examined and cross-examined; thereupon the plaintiff rests; thereupon the defendants rest; thereupon the defendants move the Court that the Court do view the premises of the defendants before the rendition of judgment herein, which said motion is by the Court denied; thereupon it appearing to the Court that additional time is needed for the submission of the case on briefs, it is hereby ordered that this case be and the same is hereby continued for the term.

It is ordered that the defendants herein serve counsel of the plaintiff herein with a copy of their brief on or before August 1st, 1907, and that the plaintiff's counsel serve defendants' counsel with copy of their brief in answer thereto, on or before September 1st, 1907, and that all briefs be on file in this case with the Clerk of the Court at a date not later than September 10th, 1907.

Be it remembered, that on to-wit, the 4th day of November, 1907, the same being one of the regular juridical days of the October, 1907, term of said Court, the following order was made and entered, inter alia, in said Court in said cause, which said order is in words and figures following, to-wit:

Argument of Counsel.

1532.

W. A. GILLESPIE
vs.
ARIZONA COPPER CO., LTD.

The plaintiff present by Armstrong & Lewis, his counsel,
38 and the defendant by M. J. Egan and Walter Bennett, its counsel, and the matter coming on to be heard upon the law and the evidence heretofore taken in this cause, said cause is argued at length by counsel for the defendant, and thereupon before hearing from the plaintiff the Court suspends the hearing herein until November 5, 1907.

Be it remembered, that on to-wit, the 5th day of November, 1907, the same being one of the regular juridical days of the October, 1907, term of said Court, the following orders were made and entered, inter alia, in said Court in said cause, which said orders are in words and figures following, to-wit:

Judgment.

1532.

W. A. GILLESPIE
vs.
THE ARIZONA COPPER CO., LTD.

The argument having been this day resumed, and the matter finally submitted to the Court for consideration and decision, and the Court being fully advised in the premises, the judgment of the Court is in favor of the plaintiff and against the defendant, and that the plaintiff be granted the injunctive relief prayed for in the complaint, the decree not to become operative until May 1, 1908, and that plaintiff recover his costs.

Motion for New Trial Overruled.

1532.

W. A. GILLESPIE
vs.
THE ARIZONA COPPER CO., LTD.

The motion for a new trial in the cause herein having been filed on this date, said motion is by counsel for the defendant pressed to ruling; whereupon the matter being submitted to the Court
39 for consideration and decision, it is by the Court ordered that said motion for a new trial be and the same is hereby overruled.

Notice of Appeal.

1532.

W. A. GILLESPIE
vs.
THE ARIZONA COPPER CO., LTD.

Now comes Walter Bennett, Esq., of counsel for the defendant herein and gives notice of appeal to the Supreme Court of the Territory of Arizona, and it is ordered that said notice be entered, which is hereto done.

(Title of Court and Cause.)

I, the undersigned, Clerk of the District Court of the Fifth Judicial District of Arizona Territory, in and for Graham County, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book C of said court, at page 185; And I further certify that the foregoing papers hereto annexed constitute the Judgment Roll in said action.

Witness my hand and the seal of the District Court, this 6th day of January A. D., 1908.

[SEAL.] W. R. CHAMBERS, *Clerk.*

40 Here follows certificate of Clerk as to costs, copy of which is omitted by direction of attorneys for appellant.

Office of the Clerk of the District Court, Graham County.

SOLOMONSVILLE, ARIZONA, *Feb. 28th*, 1908.

I, W. R. Chambers, Clerk of the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Graham, do hereby certify that the above and foregoing contains the entire record, including the original papers (the Exhibits in the case being forwarded by Wells-Fargo Express), on file in this Court, and all minute orders in the case entitled, No. 1532, W. A. Gillespie vs. The Shannon Copper Company, The Arizona Copper Company and The Arizona Copper Company, Ltd., defendants (statement of facts and order in relation thereto being forwarded under separate cover).

Witness my hand and the seal of said District Court, this 28th day of February, A. D. 1908.

W. R. CHAMBERS,
Clerk of said Court.

41 And on the same day, to-wit: the sixteenth day of March, 1908, there was filed in the Clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following, to-wit:—

(Title of Court and Cause.)

Bond.

Know all men by these presents that we, The Arizona Copper Company, Limited, a corporation, as principals, and the United States Fidelity and Guaranty Company, a corporation, of Maryland, as surety, are held and firmly bound unto William Allen Gillespie in the penal sum of Five Hundred ($500.00) Dollars for which sum well and truly to be paid to the said William Allen Gillespie, we bind ourselves, our heirs, executors, administrators and assigns, jointly severally and firmly by these presents.

Sealed with our seals and dated this 13th day of November, 1907.

The condition of the above obligation is such that whereas on the 5th day of November 1907, the said William Allen Gillespie did recover a judgment in the above entitled cause against the above bounden, The Arizona Copper Company, Limited, for the
42 sum of $85.30 costs of said action, and by which said judgment the said Arizona Copper Company, Limited, its agents, servants and attorneys are perpetually enjoined and restrained from in any wise, or in any manner, depositing or suffering or permitting to be deposited, or suffering or permitting to flow into the waters of the Gila River, the San Francisco River, and Chase Creek, any slime, tailings or sediments, from which said judgment the Arizona Copper Company, Limited, has appealed to the Supreme Court of the Territory of Arizona, and whereas it has been stipulated and agreed between the said plaintiff and this defendant that the penalty in the appeal bond in this cause shall be the sum of Five Hundred ($500.00) Dollars.

Now therefore, if the said The Arizona Copper Company, Limited, shall prosecute its said appeal with effect and shall pay all costs which have accrued in the court below, or which may accrue in the appellate court, then this obligation to be void, otherwise to remain in full force and effect.

THE ARIZONA COPPER COMPANY, LIMITED,
By WALTER BENNETT, *Its Att'y in Fact.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By THOS. ARMSTRONG, JR.,
Its Att'y in Fact.
By E. GANZ, *Its Att'y in Fact.*

[Corporate Seal of United States Fidelity and Guaranty Company.]

43 Endorsed: Approved and filed, November 23rd, 1907. W. R. Chambers, Clerk.

TERRITORY OF ARIZONA,
County of Graham, ss:

I, W. R. Chambers, Clerk of the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Graham, do hereby certify that the foregoing is a full, true and correct copy of the original bond on appeal in a case entitled William Allen Gillespie vs. The Arizona Copper Company, Limited, et al., now on file in my office.

Witness my hand and affixed Seal this 29th day of November, A. D. 1907.

[SEAL.]

W. R. CHAMBERS,
Clerk of the Said Court.

And on the same day, to-wit: the sixteenth day of March, 1908, there was filed in the Clerk's office of said court in said entitled cause a certain Statement of Facts, Order relating to Plaintiff's Objections to Statement of Facts and Suggested Amendments, and Plaintiff's Statement of Objections to Statement of Facts and
44 Suggested Amendments thereto, copies of which are omitted by direction of attorneys for appellant.

And on the same day, to-wit: the sixteenth day of March, 1908, there was filed in the Clerk's office of said Court in said entitled cause Plaintiff's exhibits A, B, C, D, E, F; exhibit X, and Defendants' exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, copies of which are omitted by direction of attorneys for appellant.

And on to-wit: the twenty-first day of March, 1908, came the appellant by its attorneys and filed in the clerk's office of said court in said entitled cause its certain Notice of Application for Order extending suspension of judgment of the District Court, copy of which is omitted by direction of attorneys for appellant.

And on to-wit: the twenty-sixth day of March, 1908, came the appellant by its attorneys and filed in the clerk's office of said court in said entitled cause its certain Petition for Suspension of
45 Judgment, copy of which is omitted by direction of attorneys for appellant.

And on to-wit: the twenty-seventh day of March, 1908, came the appellee by his attorneys and filed in the clerk's office of said court in said entitled cause a certain Affidavit in Resistance to Motion for Suspension of Decree, copy of which is omitted by direction of attorney for appellant.

And on the same day to-wit: the twenty-seventh day of March, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

On motion of Mr. Walter Bennett, attorney for appellant herein, it is ordered that the Petition for Suspension of Judgment be heard this afternoon at 2:30 o'clock.

And on the same day to-wit; the twenty-seventh day of March, 1908, being one of the regular juridical days of the January term of said court, 1908, the following other order was had and
46 entered of record in said cause in words and figures following, to-wit:

Title of Cause.

The Petition for Suspension of Judgment coming on at this time for hearing was argued by Mr. Walter Bennett for Appellant and by Mr. Thos. Armstrong, Jr., and Mr. E. W. Lewis for Appellee, and it appearing to this court that the District Court of Graham County, Arizona, by its judgment in this cause rendered on the 5th day of November, 1907, did order and adjudge that the defendant, The Arizona Copper Company, Limited, its agents, servants and attorneys, be perpetually enjoined and restrained from in any wise or in any manner depositing or suffering, or permitting to be deposited, or suffering or permitting to flow into the waters of the Gila River, or into the San Francisco River, or Chase Creek, in such manner that they may be carried into or enter into the waters of the Gila River, any slimes, slickings or tailings, and in order that the appellant herein might bring the record and judgment in said cause before this court and have the same reviewed by this court before the said judgment should go into operation and effect, did further order that the said judgment should become opera-
47 tive May 1st, A. D. 1908, and not prior thereto.

And it satisfactorily appearing to this court that the appellant in this cause has made diligent efforts to get this case before this court, and to have the record thereof reviewed by this court at the January 1908 term thereof, and that the said appellant has been unable to do so because of the failure and inability of the court reporter of said Graham County to transcribe his notes of the oral testimony taken in said cause.

And it further appearing to the court that since the commencement of this action in the District Court of Graham County, Arizona, the appellant, The Arizona Copper Company, Limited, has made diligent efforts to so operate its plant and its concentrating works as to largely decrease the amount of waste material from its works finding its way into the waters of said Gila River, and that the plaintiff will not suffer irreparable damage by a suspension of the operation of said judgment until this cause can be reviewed by this court, and that if the judgment of said Graham County District Court should become operative before this cause can be reviewed by this court, the appellant would suffer large financial damage, and a large number of persons and their dependents would be detrimentally and seriously affected thereby.

48 And it further appearing that it is proper and necessary to the doing of justice between the parties herein, and for the public interests to restrain and suspend the operation of said judgment until this appeal is finally determined by this court, or until further or otherwise ordered.

Now, therefore, it is hereby ordered that the prayer of the ap-

pellant's petition herein be, and the same is hereby granted and that the operation of the judgment of the District Court of Graham County, Arizona, in said cause be, and hereby is, arrested and suspended until this appeal is finally determined, or until the further order of this court.

It is further ordered that as a condition of the granting of this order, The Arizona Copper Company, Limited, the appellant herein, continue to use the same efforts and means to minimize the amount of its waste material finding its way into the Gila River as it is now using, and was being used at the time of the rendition of said judgment, and that in addition thereto that it execute a bond to the plaintiff and appellee herein in the sum of $20,000. conditioned for the payment to said appellee of all damages which he may suffer by reason of the suspension of the operation of the judgment
49 of the District Court of Graham County in this cause until the final determination of this cause by this court.

Done in open court at Phœnix, Arizona, this 27th day of March, 1908.

And on the same day to-wit: the twenty-seventh day of March, 1908, being one of the regular juridical days of the January term of said court, 1908, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

It is ordered by the court that this cause be submitted on briefs.

It is further ordered that the appellee herein be granted 30 days within which to file brief, and

It is further ordered that the appellant herein be granted 15 days thereafter within which to file reply brief.

And on to-wit: the seventeenth day of April, 1908, there was filed in the Clerk's office of said entitled court in said entitled cause a certain Order suspending judgment, in words and figures following, to-wit:

50 Title of Court and Cause.

Order Suspending Judgment.

It appearing to this court that the District Court of Graham County, Arizona, by its judgment in this cause rendered on the 5th day of November, 1907, did order and adjudge that the defendant, The Arizona Copper Company, Limited, its agents, servants and attorneys, be perpetually enjoined and restrained from in any wise or in any manner depositing or suffering, or permitting to be deposited, or suffering or permitting to flow into the waters of the Gila River, or into the San Francisco River, or Chase Creek, in such manner that they may be carried into or enter into the waters of the Gila River, any slimes, slickings or tailings, and in order that the appellant herein might bring the record and judgment in said cause

before this court and have the same reviewed by this court before the said judgment should go into operation and effect, did further order that the said judgment should become operative May 1st, A. D. 1908, and not prior thereto.

And it satisfactorily appearing to this court that the appellant in this cause has made diligent efforts to get this case before this court, and to have the record thereof reviewed by this court at the
51 January, 1908, term thereof, and that the said appellant has been unable to do so because of the failure and inability of the court reporter of said Graham County to transcribe his notes of the oral testimony taken in said cause.

And it further appearing to the court that since the commencement of this action in the District Court of Graham County, Arizona, the appellant, The Arizona Copper Company, Limited, has made diligent efforts to so operate its plant and its concentrating works as to largely decrease the amount of waste material from its works finding its way into the waters of said Gila River, and that the plaintiff will not suffer irreparable damage by a suspension of the operation of said judgment until this cause can be reviewed by this court, and that if the judgment of said Graham County District Court should become operative before this cause can be reviewed by this court, the appellant would suffer large financial damage, and a large number of persons and their dependents would be detrimentally and seriously affected thereby.

And it further appearing that it is proper and necessary to the doing of justice between the parties herein, and for the public
52 interests to restrain and suspend the operation of said judgment until this appeal is finally determined by this court, or until further or otherwise ordered.

Now, therefore, it is hereby ordered that the prayer of the appellant's petition herein be, and the same is hereby granted, and that the operation of the judgment of the District Court of Graham County, Arizona, in said cause be, and hereby is, arrested and suspended until this appeal is finally determined, or until the further order of this court.

It is further ordered that as a condition of the granting of this order, The Arizona Copper Company, Limited, the appellant herein, continue to use the same efforts and means to minimize the amount of its waste material finding its way into the Gila River as it is now using, and was being used at the time of the rendition of said judgment, and that in addition thereto that it execute a bond to the plaintiff and appellee herein in the sum of $20,000. conditioned for the payment to said appellee of all damages which he may suffer by reason of the suspension of the operation of the judgment of the District Court of Graham County in this cause until the final determination of this cause by this court.

53 Done in open court at Phoenix, Arizona, this 27th day of March, 1908.

By the Court,

EDWARD KENT,
Chief Justice.

And on to-wit: the twenty-eighth day of April, 1908, came the appellant by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain Bond in words and figures following, to-wit:

Title of Court and Cause.

Know all men by these presents, That the Arizona Copper Company Limited, a corporation, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto William Allen Gillespie in the sum of Twenty Thousand ($20,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, the undersigned bind themselves, their legal representatives and assigns, jointly, severally and firmly by these presents.

Dated this 27th day of April, 1908.

The condition of the above obligation is such that

Whereas, on the 5th day of November, 1907, the District
54 Court of Graham County, Arizona, did enter a judgment in the above entitled cause by which said judgment it was ordered and decreed that the above named obligee, the Arizona Copper Company, Limited, its agents, servants and attorneys, be perpetually enjoined and restrained from in any wise or in any manner depositing or suffering or permitting to be deposited, or suffering to flow, into the waters of the Gila River, or into the San Francisco River, or into Chase Creek, in such manner that they may be carried into or enter into the waters of said Gila River, any slimes, slickings or tailings; the said judgment to become operative May 1st, 1908, and not prior thereto.. And,

Whereas: The said Arizona Copper Company, Limited, has appealed to the Supreme Court of the Territory of Arizona from said judgment and from the order of said District Court denying a new trial of said action, and,

Whereas: The said Arizona Copper Company Limited, has made application in this court for an order suspending the operation of said judgment pending said appeal, and

Whereas: On the 27th day of March, 1908, the said application was heard by this court, and this court did upon the hearing
55 of said application, enter an order in this cause granting the prayer of said application, and requiring as a condition of said order, that these presents be executed and delivered;

Now, therefore, if the said principal obligee herein, the Arizona Copper Company, Limited, shall prosecute its said appeal with effect, and shall pay to the said William Allen Gillespie all damages which he may suffer by reason of the judgment of this court entered as aforesaid, suspending the operation of said judgment of the District Court of Graham County, Arizona, until this cause shall be finally determined by this court, or until the further order of

this court, then this obligation to be void; otherwise to remain in full force and effect.

THE ARIZONA COPPER COMPANY, LIMITED,
By WALTER BENNETT, *Its Att'y.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By THOS. ARMSTRONG, JR., *Its Attorney in Fact.*
By E. GANZ, *Its Attorney in Fact.*

And on to-wit: the twelfth day of January, 1909, being one of the regular juridical days of the January term of said court,
56 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, on motion of Mr. Walter Bennett attorney for appellant herein, it is ordered that he be granted leave to submit additional authorities.

And on to-wit: the twentieth day of March, 1909, there was filed in the clerk's office of said court in said entitled cause, a certain Opinion in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

No. 1052.

THE ARIZONA COPPER COMPANY, LIMITED, Appellant,
versus
WILLIAM ALLEN GILLESPIE, Appellee.

Appeal from the District Court of Graham County; Before Honorable Frederick S. Nave, Judge.

Messrs. Walter Bennett and M. J. Egan for Appellant.
Messrs. Armstrong & Lewis, for Appellee.

This action was brought by the appellee against the Shan-
57 non Copper Company, The Arizona Copper Company, Limited, and The Arizona Copper Company, to obtain an injunction restraining the defendants from depositing mining debris in streams tributary to the Gila River. It appearing to the plaintiff that The Shannon Copper Company had ceased to do the acts complained of, and that The Arizona Copper Company was not a proper party, the action was dismissed as to both these corporations, and prosecuted against the appellant corporation only. Testimony was taken in May, and the cause submitted and judgment rendered in November, 1907, enjoining the defendant from depositing any slimes, slickens or tailings in the San Francisco River or Chase

Creek, in such manner that they may be carried into or enter into the waters of the Gila River. The facts found by the trial court are:

"That the Gila River rises in the Territory of New Mexico, and flows thence through a generally mountainous country through the County of Graham and other counties in the Territory of Arizona in a westerly direction, into the Colorado River at or near the City of Yuma, in the Territory of Arizona.

That the San Francisco River is an affluent of the said Gila River, emptying its waters into the said Gila River at or near the City of Clifton aforesaid, and above the head of the Montezuma and other canals hereinafter described.

That Chase Creek is an affluent of the said San Francisco River, emptying its waters into the said San Francisco River above the City of Clifton; that each and all of said streams are public streams within the said county of Graham, and the waters thereof are applicable to the purposes of mining, irrigation, and domestic use.

58 That the plaintiff is the owner and occupant of about 276 acres of land in the upper Gila Valley, near the town of Solomonsville, and that said land is naturally desert and unproductive without the application of water thereon by irrigation.

That the predecessors in interest of plaintiff in said land commenced the cultivation to valuable crops of portions of the same by means of water diverted from the Gila River through the Montezuma Canal about the year 1872, and thereafter gradually increased the amount thereof so cultivated until for more than fifteen years last past the whole of said premises has been continually cultivated to valuable crops by means of said waters of the Gila River.

That the said Montezuma Canal, by and through which plaintiff diverts the water appropriated for use upon said land as aforesaid, at all the times mentioned herein, headed and now heads at a point upon the bank of said Gila River at or near the southwest corner of the northeast quarter of the northeast quarter of Section 17, Township 7 South, Range 26 East, G. & S. R. B. & M., in said Graham County, at a distance of about 25 miles below the confluence of the said San Francisco River and said Gila River. That commencing at said head of the said Montezuma Canal and extending out into and across the said Gila River was at all the times mentioned herein, and now is, maintained a dam for the purpose of diverting the waters of said Gila River into said Canal. That said Montezuma Canal is of a capacity sufficient to, and does, divert and carry 3,000 inches of water, miner's measurement, from the said Gila River, and said canal extends out through the farming lands of the valley commonly known and called the Upper Gila Valley, a distance of 13½ miles, all within the said County of Graham. That said canal carries the public waters of said Gila River for the irrigation of more than 3,750 acres of land, to which said water was, and now is, appropriated, diverted, and applied by the owners and occupants thereof for agricultural purposes, and drinking and domestic uses in connection therewith, amongst others, to the lands of plaintiff. That said canal

and dam is maintained by the owners of said lands and plaintiff, for the purposes and uses aforesaid.

That in the said Upper Gila Valley and County of Graham, and from a point on said Gila River at or near eighteen miles below the confluence of said San Francisco and said Gila Rivers to a
59 points fifty-three miles below said last-named point, numerous irrigation ditches, amongst others said Montezuma Canal, were taken out of said Gila River at various times in and since the year 1872 by divers persons who were then, and are now, the owners and occupants of irrigable lands lying upon either side of said Gila River, and by means of said ditches the public waters of said river have been ever since appropriated, diverted and applied to the irrigation and cultivation of a constantly increasing quantity of irrigable lands so situated under said canals and occupied by persons entitled to the use of said waters, amongst others this plaintiff, until at the time of the institution of this suit more than twenty-three thousand acres of such lands were so irrigated and cultivated; and the said lands, theretofore desert and unproductive, were reclaimed and were made to, and do now, produce alfalfa, grains, vegetables, melons, fruits, trees, and vines; that at all the times herein mentioned, said ditches have been, and are now, maintained, and said public waters of said Gila River used upon the aforesaid land for the irrigation thereof, and the cultivation of valuable crops as aforesaid, and for domestic and drinking purposes in connection therewith. That as a result of the use of said public waters of said Gila River as aforesaid, a rich and prosperous farming community has been established upon the lands aforesaid, supporting the towns of Solomonsville, of Safford, of Thatcher, and others; in all a community of more than eight thousand persons.

That in the mountains through which the said Gila River and its affluents flow, in the neighborhood of the towns of Clifton, Morenci and Metcalf, within the County of Graham, are large deposits of copper ore, and that several large mining companies, including the defendant, The Arizona Copper Company, Limited, are engaged in the business of mining and reducing said ores; that mining operations on said deposits were commenced by miners about the year 1872 and have been continuously and increasingly prosecuted since that date, and that said mining industry and the farming industry in the Upper Gila Valley in which is situated the town of Solomonsville, were commenced about the same time and have each grown and increased in volume and importance to the present time. That the defendant, The Arizona Copper Company, Limited, is engaged in the reduction and treatment of copper ore in said mining district near the upper branches and affluents of the Gila River. That for the purpose of reducing and treating the said ores so
60 mined as aforesaid, said defendant has established upon the banks of said San Francisco River and said Chase Creek and upon the sides of the cañons debouching into said last-named streams, concentrators of a capacity sufficient to, and which now actually, reduce and treat more than three thousand tons of copper ore each day.

That it has invested a large amount of money in the development of said mining industry and in the installation and equipment of concentrators, smelting and reduction works used in the reduction of the products of said mines; and that the plants of this defendant company now used in said operations represent an investment of about fifteen million dollars. That defendant, in its mining, smelting and reduction of ores gives employment to about 3000 men and that a community of about 12,000 people are dependent for a livelihood upon the operations of the mining works of this defendant and of the other mining companies hereinbefore referred to.

That in the reduction of said copper ores by this defendant said ores are crushed and mixed with water, and that a portion of the slickens, slimes and tailings therefrom finds its way through the creeks, affluents and canals upon which the works of said defendant are situated, into the waters of the Gila River and becomes mingled therewith, and is carried by the waters of said Gila River down to the Upper Gila Valley in which the farming operations of the plaintiff are carried on, and by and through said river and irrigating ditches in the ordinary and necessary course of irrigation, to and upon the cultivated lands of plaintiff, and of others like situated.

That the Gila River is normally subject to periods of flood and of lower water recurrent several times during each year, due to recurrence of torrential rains alternating with periods without rain or with slow-falling rains; that during such periods of flood said river carries quantities of sedimentary matter, the product of erosion of the mountains, hills and valleys through which it and its tributaries flow; that this sedimentary matter contains organic fertilizers; that such matter is, at such periods of flood, carried through said irrigating canals in the normal and necessary course of irrigation, to and upon the lands of plainaiff and upon the cultivated lands of the valley, hereinbefore mentioned, and enhances their fertility, thereby in that respect benefiting
61 said lands; that at such periods of flood the proportion of slickens, slimes and tailings carried by the waters to the whole amount of sedimentary matter so carried is so small as to be negligible in determining the effects of the sedimentary matter upon the cultivated lands. That at the periods of lower water, the water of said river flowed clear and free from sediments prior to the time when such water began to carry slickens, slimes and tailings as herein described, and would continue so to flow clear and free from sediments, but for such slickens, slimes and tailings, and then did and now, but for such slimes, slickens and tailings, would continue to furnish clear water free from sediments to the various canals herein mentioned for the irrigation of the lands of plaintiff and of the other lands herein mentioned; that such clear water free from sediments is more valuable for the purposes of irrigation than water carrying sedimentary matter, whether of the natural products of erosion or of slimes, slickens or tailings; that in about the year 1885 the first concentrator was erected for the reduction of ores in con-

nection with the mining enterprises herein mentioned; that at a time which the Court cannot exactly determine, but some six to eight years before the institution of this action, the waters of the Gila River at other than flood periods, theretofore clear, became discolored by slime, slickens and tailings and began to deposit such slimes, slickens and tailings through the irrigating ditches herein mentioned in the normal and necessary course of irrigation upon the lands of plaintiff and other lands herein mentioned.

That since the last-mentioned time the quantity of such slimes, slickens and tailings carried by the said river and so deposited upon said lands of plaintiff and said other lands, continuously increased, until after the institution of this suit; that the said slimes, slickens and tailings so carried upon the said lands of plaintiff and the other said lands consist of finely pulverized rock; are inert; are chemically not injurious to the soil, or to plant life; add nothing of value to the farming lands of said valley for any purpose; are destitute of organic fertilizing material, but contain a small quantity of inorganic fertilizing material of a kind with which the soil of the said lands of plaintiff and other said lands, are, and at the times mentioned herein have been, adequately supplied; that all of said sedimentary matter carried upon said cultivated lands of plaintiff and other said lands, whether the products of erosion, or slimes, slickens and tailings, injuriously affects the said cultivated lands for the purpose of raising crops, in that it becomes deposited in constantly increasing depth on the surface of said cultivated lands, being deposited more heavily and to a greater depth near the points at which the water is immediately applied to said lands for the purpose of irrigation, and becoming progressively thinner as the water passes over the said lands farther from the points of immediate diversion and application; that said deposit of sedimentary matter is injurious to said lands for the purpose of raising crops in several respects: One, in that it elevates the land adjoining the point of immediate application of the said water, thus compelling the taking of the water supply from increasingly high water levels in order to flood the water upon said lands; a second, in that it forms a compact layer over the soil, not readily permeable by water, thus depriving the roots of the plants of the appropriate and necessary irrigation; and a third, in that it packs about the roots and stems of growing plants thus mechanically choking and burying them to the restriction of their growth and productiveness; that the second named injurious effect is remediable by deep plowing and harrowing, whereby sedimentary matter so deposited is mingled with the natural soil; that the most important crop grown by plaintiff and by the cultivators of the other cultivated lands herein referred to, both in the extent of land on which said crop is cultivated, and in the value, is of alfalfa, which is a perennial and cannot be plowed without its destruction; that alfalfa reaches its highest productivity at the age of three or four years, and continues at a maximum of productivity, for a lifetime of unascertained duration, in excess of fifteen years; that alfalfa stools at or near the surface of the soil, and that the productivity and thrifti-

62

ness of the plant is seriously impaired, when the crown at which it so stools becomes covered; that said sedimentary deposits are peculiarly injurious to alfalfa by reasons of the fact that they bury the stooling crowns; that the injurious effect of such deposits upon alfalfa may be ameliorated but not obviated by deep harrowing; that the sedimentary deposit upon cultivated soil of slimes, slickens and tailings is more injurious than the natural sediment of erosion (to an extent which the Court cannot define in a percentage) by reason of the fact that the said slimes, slickens and tailings are much more finely pulverized than the natural sediment of erosion and form a more compact blanket, more nearly impermeable to
63 the passage of water, and when dry, much harder, more cement-like, and more difficult to plow, or harrow; that the said slimes, slickens and tailings are also more injurious to growing plants in their mechanical choking effect than the natural sediment of erosion by reason also of the more fine pulverization of the former and the more compact way in which they become packed on and about the roots and stems of such growing plants; that normally the periods of lower water in the said river come at the times when there is the greatest need of irrigation by growing crops; that for a period of a year or two prior to the institution of this suit the waters of the said river carried such a great volume of slimes, slickens and tailings that layers of such slimes, slickens and tailings, unmixed with other substances, were deposited in some of the irrigating ditches more directly affected thereby and on the soil near the points of immediate application of water therefrom for purposes of irrigation, of a thickness of half an inch or more; that the plaintiff was injured in the loss of the productivity of his fields of alfalfa upon his said lands in the year preceding the filing of this suit, by reason of the sedimentary deposits upon his fields of alfalfa, in an amount which the Court cannot exactly determine, in excess of one thousand ($1,000) dollars; that from the same cause the crops of alfalfa grown upon the other cultivated lands herein referred to during the said year were diminished to an amount and in a value which the Court cannot exactly determine, of many thousands of dollars.

The Court further finds that complaints of the effect of said slimes, slickens and tailings were first made by the plaintiff to the said defendant about five years ago, and that thereafter said defendant commenced and thereafter prosecuted the work of arresting the same from entering said Gila River, and that in doing so it has established large and expensive settling works and devised means of carrying off a large proportion of its waste products, and in its said efforts has expended approximately $50,000; that at the time of the trial of this cause about seventy-five per cent of the total waste products of defendant's works theretofore deposited in tributaries of said Gila River were, and now are, arrested, settled and otherwise disposed of, with such result that a large percentage, which the Court cannot determine from the evidence, but fixes as in excess of fifty

per cent, of the slimes, slickens and tailings theretofore flow-
64 ing from said works into said river, do not so flow. That prior to the institution of this suit the co-defendants of this defendant contributed from their reduction works a portion of the slimes, slickens and tailings then being carried by said river to and upon the lands of plaintiff and the other lands herein mentioned; that at the time of the trial of this cause said co-defendants had ceased and agreed to cease the flowing of such slimes, slickens and tailings into said river.

The Court further finds that during the last five years the agricultural lands of the Upper Gila Valley in the vicinity of Solomonville, including the lands of the plaintiffs, have greatly increased in market value and selling price, and that that portion of said lands which are set to alfalfa and are known as alfalfa lands have in the last five years increased in value and market price to the same extent as that portion of said lands adapted to and used in the production of cultivated crops.

That the injuries complained of in said complaint are continuous, and constantly increasing. That plaintiff has no adequate remedy at law for the redress of said injuries caused him by said defendant, in this, that the damages caused to plaintiff by the acts of defendant are of a nature not readily susceptible of proof in an action at law for damages, and that said injuries in their ultimate effect are irreparable. That the defendant threatens to, and will, unless restrained by the order of this Court, continue to deposit slimes, slickens and tailings as hereinbefore set forth, to the damage of plaintiff."

It appears that the defendant company operates three concentrating plants, one of which is located at the town of Morenci, one between Morenci and Clifton, and one at Clifton. At the time of the trial provision had been made whereby all of the slimes, slickens and tailings from the concentrators other than the one at Clif-
ton, were impounded and none allowed to go into the waters
65 of the Gila River. It also appears that owing to the topography of the country it is impossible to impound and restrain from going into the river the finer and lighter tailings or slimes from the concentrator at Clifton, and that compliance with the order of the court must result in closing down the concentrator at that point. The evidence does not disclose the capacity of that concentrator, nor the number of persons employed there. It further appears from uncontradicted testimony in the case that it is practicable to construct and maintain, at moderate expense, settling basins at or near the heads of the various irrigating canals, by means of which much of the sediment, including that from the defendant's concentrator, may be prevented from going into the irrigating canals.

CAMPBELL, *J.* (after stating facts):

It is insisted by the appellant that if any wrong is being done by permitting debris from its mining operations to go into the river, the acts constitute a public nuisance, and that the plaintiff may not maintain this action, because it does not appear that the injury sus-

tained by him differs in kind from that sustained by the general public.

The Supreme Court of the United States, our appellate
66 court, in the early case of Georgetown v. Alexandria Canal Co., 12 Peters, 91, after reviewing the authorities, say:

"The principle then is, that in case of a public nuisance where a bill is filed by a private person, asking for relief by way of prevention, the plaintiff cannot maintain a stand in a court of equity, unless he avers and proves some special injury."

In Mississippi and Missouri Railroad Company v. Ward, 2 Black, 485, it is said:

"A bill in equity to abate a public nuisance, filed by one who has sustained special damages, has succeeded to the former mode in England of an information in Chancery, prosecuted on behalf of the Crown, to abate or enjoin the nuisance as a preventive remedy. The private party sues rather as a public prosecutor than on his own account; and unless he shows that he has sustained, and is still sustaining, individual damage, he cannot be heard. He seeks redress of a continuing trespass and wrong against himself, and acts in behalf of all others, who are or may be injured."

The rule, as stated by many if not most of the courts of the states, is that to authorize a private citizen to maintain an action to abate a public nuisance, he must show a special injury, different in kind and not merely in degree, from that suffered by the public generally, and much difficulty has been found in determining when the injury differs in kind rather than in degree from that suffered by the public. This difficulty has led the Supreme Court of Minnesota to declare that,

"No general rule can be laid down which can be readily applied to every case. Where to draw the line between cases where
67 the injury is more general or more equally distributed and cases where it is not, where by reason of local situation the damage is comparatively much greater to the special few, is often a difficult task. In spite of all the refinements and distinctions which have been made, it is often a mere matter of degree, and the courts have to draw the line between the more immediate obstruction or peculiar interference, which is a ground for special damage, and the more remote obstruction or interference which is not". Kaje v. Railway Co., 57 Minn., 422; 59 N. W., 493.

One of the clearest statements, we think, of the distinction is to be found in Wesson v. Washburn Iron Company, 13 Allen (Mass.), 95, where it is said:

"The real distinction would seem to be this: that when the wrongful act is of itself a disturbance or obstruction only to the exercise of the common and public right, the sole remedy is by public prosecution, unless special damage is caused to individuals. In such case the act of itself does no wrong to individuals distinct from that done to the whole community. But when the alleged nuisance would constitute a private wrong by injuring property or health, or creating personal inconvenience or annoyance, for which an action might be maintained in favor of a person injured, it is

none the less actionable because the wrong is committed in a manner and under circumstances which would render the guilty party liable to indictment for a common nuisance. This we think is substantially the conclusion to be derived from a careful examination of the adjudged cases. The apparent conflict between them can be reconciled on the ground that an injury to private property, or to the health and comfort of an individual, is in its nature special and peculiar, and does not cause a damage which can properly be said to be common or public, however numerous may be the cases of similar damages arising from the same cause."

Tested by these rules, we have no difficulty in concluding
68 that the plaintiff may maintain this action. By reason of the acts of the defendant he, with other owners of land irrigated by water from the Gila River, is suffering a direct individual injury, different from that of the general public. It is true that the general public also suffers an injury from the acts of the defendant, but only in the sense that whatever decreases the general prosperity of the community injures all who are members of the community. The injury of those so suffering is general and not special.

Appellant contends that the facts found by the court do not disclose that it is committing any wrong, for the reason that it is engaged in the conduct of a lawful business; that the right to use the waters of a public stream for mining purposes is recognized by law; that its rights in that respect are equal to those of the agriculturist to use the water for purposes of irrigation and that in depositing in the river only such of the slimes and tailings as is reasonably necessary in the successful operation of its business it is acting wholly within its rights. Riparian rights do not exist in this Territory. The laws of the Territory do recognize the right to appropriate the waters of public streams for mining purposes,
69 as well as for agriculture. No superior right, however, is accorded the miner. Under the doctrine of appropriation, he who is first in time is first in right, and so long as he continues to apply the water to a beneficial use, subsequent appropriators may not deprive him of the rights his appropriation gives, either by diminishing the quantity or deteriorating the quality. We do not mean to say that the agriculturist may captiously complain of a reasonable use of water by the miner up the stream, although it pollutes and makes the water slightly less desirable, nor that a court of equity should interfere with mining industries because they cause slight inconveniences or occasional annoyances, or even some degree of interference, so long as such do no substantial damage, but to permit a subsequent appropriator to so pollute or burden the stream with debris as substantially to render it less available to the prior appropriator causes him to lose the rights he gained by appropriation as readily as would the diversion of a portion of the water which he appropriated. The plaintiff, by his grantor, appropriated water for the purposes of irrigation in 1872, as did other agriculturists in the community, and, while it does not clearly appear when the de-

fendant first made use of water in connection with its operations, it does appear that it was not prior to 1885.

Counsel press upon us the proposition that we should consider the comparative damage that will be done by granting or withholding an injunction in this case, alleging that the effect of an injunction will be to stop the operation of extensive works, deprive thousands of persons of employment, and cause loss and distress to other thousands. It is undoubtedly true that a court should exercise great care and caution in acting where such results are to follow. It should very clearly appear that the acts of the defendant are wrongful and that the complainant is suffering substantial and irreparable injury, for which he cannot secure adequate compensation at law. A number of eminent courts support the contention of appellant, that the comparative injury to the parties in granting or withholding relief must also be considered. Among the cases so holding is McCarthy v. Bunker Hill and Sullivan Mining and Concentrating Company, 164 Fed., 927, decided by the Circuit Court of Appeals for this circuit, a court for which we entertain the highest respect and which exercises an appellate jurisdiction over this court in certain cases; and if this case were reviewable there, we should not feel at liberty to express views in conflict with those of that court. But this case is reviewable only by the Supreme Court of the United States, and we cannot find, as suggested by the Circuit Court of Appeals, that that court has given adherence to the doctrine. It seems to us that to withhold relief where irreparable injury is and will continue to be suffered by persons whose financial interest are small in comparison to those who wrong them, is inconsistent with the spirit of our jurisprudence. It is in effect saying to the wrong-doer, "if your financial interests are large enough so that to stop you will cause you great loss, you are at liberty to invade the rights of your smaller and less fortunate neighbors." We prefer the doctrine adhered to by Judge Hawley in his dissenting opinion in Mountain Copper Company v. United States, 142 Fed., 643, and by Judge Sawyer in Woodruff v. North Bloomfield Gravel Mining Company, 18 Fed., 753. In the latter case, it is said:

"Of course, great interests should not be overthrown on trifling or frivolous grounds, as where the maxim 'de minimis non curat lex' is applicable; but every substantial, material right of person or property is entitled to protection against all the world. It is by protecting the most humble in his small estate against the encroachments of large capital and large interests that the poor man is ultimately enabled to become a capitalist himself. If the smaller interest must yield to the larger, all small property rights, and all smaller and less important enterprises, industries, and pursuits, would sooner or later be obsorbed by the large, more powerful, few; and their development to a condition of great value and importance, both to the individual and the public, would be arrested in its incipiency."

To the same effect are the remarks of Judge Marshall in McCleery v. Highland Boy Gold Mining Company, 140 Fed., 951, wherein he says:

"The substantial contention of the defendant is that it is engaged in a business of such extent and involving such a large capital that the value of the plaintiff's rights sought to be protected is relatively small, and that therefore an injunction, destroying the defendant's business, would inflict a much greater injury on it than it would confer benefit upon the plaintiffs. Under such circumstances, it is asserted, courts of equity refuse to protect legal rights by injunction and remit the injured party to the partial relief to be obtained in actions at law. Stated in another way, the claim in effect is that one wrongfully invading the legal rights of his neighbor will be permitted by a court of equity to continue the wrong indefinitely on condition that he invest sufficient capital in the undertaking.

I am unable to accede to this statement of the law. If correct, the property of the poor is held by uncertain tenure, and the constitutional provisions forbidding the taking of property for private use would be of no avail. As a substitute it would be declared that private property is held on the condition that it may be taken by any person who can make a more profitable use of it, provided that such person shall be answerable in damage to the former owner for his injury. In a state of society the rights of the individual must to some extent be sacrificed to the rights of the social body; but this does not warrant the forcible taking of property from a man of small means to give it to the wealthy man, on the ground that the public will be indirectly advantaged by the greater activity of the capitalist. Public policy, I think, is more concerned in the protection of individual rights than in the profits to inure to individuals by the invasion of those rights."

See also Sullivan v. Jones and McLaughlin Steel Co., 208 Pa., 540; 57 Atl., 1065.

However, if we felt called upon to undertake the task
73 of comparing the injury that must result to the two communities, we are not certain that the comparison would result favorably to the appellant. While the testimony shows, and the trial court found, that the appellant has invested about fifteen million dollars and gives employment to about three thousand men, and that many others are dependent upon the operation of its properties, the testimony also discloses that but one of its three concentrators will be affected by the injunction; that the slimes and tailings from the others are impounded and do not find their way into the river; and it is not shown just what hardship will result to the corporation or community from the closing of this concentrator. Upon the other hand, the one principal industry of the upper Gila Valley, alfalfa raising, will suffer great injury and possible destruction if the injunction be refused. The destruction of that industry, or even serious injury to it, will in a measure bring disaster to a large and prosperous community. In our opinion a court should exercise great care, but should not refuse relief where the injury is substantial and the right clear.

One of the witnesses who testified on behalf of the defendant was

Professor R. H. Forbes, director and chemist of the Agri-
74 cultural Experiment Station at the University of Arizona. Both plaintiff and defendant put in evidence a bulletin prepared by Professor Forbes and issued by the University of Arizona, in which are set forth the observations and conclusions of the writer as to the effects of the sediments of the Gila River and of the mining detritus, such as comes from appellant's concentrators, upon the agricultural lands of the upper Gila Valley. Appellant now complains that some of the conclusions reached by Professor Forbes are not warranted by the facts which he observed and recorded. We have given the matter attention, but to review the testimony here would unduly extend this opinion. It seems sufficient to say that in our opinion the testimony of Professor Forbes, together with that of the farmers, fully sustains the findings of fact made by the trial court.

It would seem from the testimony of Professor Forbes that it is practicable, at comparatively small expense, to construct settling basins at or near the heads of the canals, or elsewhere along the river, by means of which the tailings and slimes carried by the Gila river from appellant's concentrator may be arrested and prevented from being deposited upon the farming lands. We do not agree with appellant that the farmers should be required to construct
75 and maintain such basins, but we see no reason why, if such basins will afford relief, appellee should not be permitted to construct and maintain them at its own expense. This suggestion does not appear to have been presented to the trial court and its decree is so drawn that such means of relief may not be availed of since appellant is enjoined from permitting any of tailings or slimes to reach the waters of the Gila river. We think, to enable the mining company to take advantage of any efforts it may make in this direction, it should be left to the discretion of the trial court hereafter upon a proper showing made to it temporarily to modify the injunction so as to permit of reasonable experiments being made to ascertain the probability of successfully erecting and maintaining settling basins to effectually dispose of the tailings and slimes without detriment to the lands lying under the canals, and with authority in the District Court likewise permanently to enforce or modify the injunction in accordance with the conditions as they shall be found to be.

The decree of the district court is modified as indicated, and as modified, is affirmed.

JOHN H. CAMPBELL, *A. J.*

We concur:
EDWARD KENT, *C. J.*
RICHARD E. SLOAN, *A. J.*
FLETCHER M. DOAN, *A. J.*

76 And on the same day to-wit: the twentieth day of March, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order and judgment was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

This cause having been heretofore submitted and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises:

It is ordered that the judgment of the District Court be modified as indicated in the opinion rendered herein, to which reference is hereby made, and as so modified, be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that appellee herein do have and recover of and from the Arizona Copper Company, Limited, appellant herein, and the United States Fidelity and Guaranty Company, a corporation, of Maryland, sureties on appeal bond herein, his costs in this court, taxed at forty-eight and 35/100 dollars, together with his costs in the court below in this cause
77 incurred.

And on to-wit: the thirty-first day of March, 1909, came the appellant by *his* attorneys and filed in the clerk's office of said court in said entitled cause *his* certain Motion for Rehearing in words and figures following, to-wit:

Title of Court and Cause.

Petition for Rehearing.

Comes now The Arizona Copper Company, Limited, appellant in the above entitled cause, by M. J. Egan and Walter Bennett, its attorneys, and moves this court to grant a rehearing herein; and as grounds for said motion shows to the court—

First. That the court failed to consider the fact demonstrated from the testimony of Professor Forbes and uncontradicted by any other evidence, that the deleterious effects of the sedimentation of the alfalfa fields is exactly proportioned to the amount of natural sediment carried by the waters of the river from which the fields are irrigated without reference to mining debris carried in suspension therein. This is demonstrated by the fact that a proportional deleterious effect was observed and recorded by Professor Forbes in the alfalfa fields irrigated with water from the Salt and Colorado Rivers containing no tailings or other mining debris.

Second. The Court failed to consider the fact undisputed
78 by the evidence and found by the trial court that more than seventy-five per cent. of the tailings from the defendant's works which were being cast into the river at the time the action was commenced, and to which time all the evidence regarding their deleterious effect was referred, were at the time of the trial, and now are being kept out of the river by the defendant.

Third. The court failed to consider the fact, demonstrated by the evidence and found by the trial court, that all sediments carried by the irrigating water onto the fields are detrimental to the alfalfa crops, and that large quantities of natural sediments are carried onto

the lands by the irrigation thereof with the waters of the Gila River, and the further fact demonstrated by the evidence and undisputed, that at the time of the hearing of this cause less than one four-hundredth part of the sediment so carried upon the lands was mining tailings and of that one four-hundredth part only a portion was contributed by the operations of this defendant, and that therefore the shutting down of defendant's works would not appreciably affect the sedimentation and consequent injury to plaintiff's crops.

Fourth. The court failed to consider that the placing upon the defendant the burden of the construction of "settling basins
79 at or near the heads of the canals or elsewhere along the river", for the purpose of settling the sediment and tailings out of the water of the river and thereby clarifying it for the use of the irrigationists, is to place upon the defendant the necessity of freeing the waters of the river of sedimentation only one four-hundredth part of which is contributed by all the mining companies and only a portion of which one four-hundredth part is contributed by this defendant.

Fifth. The court failed to consider the fact proven by the uncontradicted evidence and found by the court that notwithstanding the alleged injury to the agricultural lands of the Gila Valley, those lands have within the last five years "greatly increased in market value and selling price, and that that portion of said lands known as alfalfa lands have in the last five years increased in market value and selling price to the same extent as that portion of said lands adapted to and used in the production of cultivated crops", and the court failed to consider the inconsistency of such increase of value with the alleged injury to the lands in question by the operations of the defendant.

Sixth. That the court failed to consider the effect of the
80 finding of the trial court that "at periods of flood the proportion of sli-kens, slime and tailings carried by the waters to the whole amount of sedimentary matter so carried is so small as to be negligible in determining the effects of the sedimentary matter upon the cultivated lands" as bearing upon the question of the modification of the injunction so as to permit the appellant to flow its tailings into the river during such flood periods, when as so found they could do no appreciable damage, and that such a modification could not injure appellant and would enable appellee to operate its concentrating works during a large part of the year.

Seventh. The court failed to consider that the judgment of the trial court in this case enjoins the appellee from "depositing or suffering or permitting to be deposited, or suffering or permitting to flow into the waters of the said Gila River, or into said San Francisco River, or said Chase Creek in such manner that they may be carried into or enter into the waters of the Gila River, any slimes, slickens or tailings." That this injunction is not limited to such slimes, slickens and tailings as are carried in suspension in the waters of the Gila River to the point where the appellee diverts water from said river for the irrigation of his lands, and prohibits the
81 use of the river and for the depositing of any waste material

from defendant's works, whether such waste material would reach the agriculturalists or not.

M. J. EGAN AND
WALTER BENNETT,
Attorneys for Appellant.

And on to-wit: the thirteenth day of April, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day it is ordered by the Court that the Motion for Rehearing filed herein by appellant, be submitted.

And on to-wit: the first day of May, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day it is ordered by the Court that the Motion for Rehearing filed herein by appellant and heretofore submitted,
82 be continued until the next session of the court, November 8, 1909, and injunction suspended during that period.

And on to-wit: the ninth day of November, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day it is ordered by the Court that the Motion for Rehearing filed herein by appellant and heretofore submitted and continued, be continued until the January term of court, 1910.

And on the same day to-wit: the ninth day of November, 1909, being one of the regular juridical days of the January term of said court, 1909, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

At this day it is ordered by the Court that appellee herein be granted leave to file Statement resisting further suspension of injunction.

83 And on to-wit: the tenth day of November, 1909, came the appellee by his attorneys and filed in the clerk's office of said court in said entitled cause his certain Statement resisting further suspension of injunction, copy of which is omitted by direction of attorneys for appellant.

And on to-wit: the tenth day of January, 1910, being one of the regular juridical days of the January term of said court, 1910, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day it is ordered by the Court that the Motion for Rehearing filed herein by appellant and heretofore submitted, be and the same is hereby denied.

And on the same day to-wit: the tenth day of January, 1910, being one of the regular juridical days of the January term of said court, 1910, the following other order was had and entered of record in said cause in words and figures following, to-wit:

84 Title of Cause.

At this day comes Mr. Walter Bennett for appellant herein, in open court, and gives notice of appeal to the Supreme Court of the United States, from the judgment of this Court.

And on to-wit: the twenty-second day of January, 1910, came the appellant by their attorneys and filed in the clerk's office of said Court in said entitled cause its certain Petition for Allowance of appeal, in words and figures following, to-wit:

Title of Court and Cause.

The defendant, The Arizona Copper Company, Limited, a corporation, conceiving itself aggrieved by the order of the Supreme Court of Arizona entered on the 30th day of March, 1909, affirming the judgment of the District Court of Graham County, Arizona, in the above entitled cause, and the further order of the Supreme Court of the Territory of Arizona in said cause denying the motion of the above named defendant for a rehearing of said cause entered on the 10th day of January, 1910, does hereby appeal from the said orders and judgment of said Supreme Court of the Territory of Arizona in said cause to the Supreme Court of the United States, and
85 does hereby pray that said appeal be allowed and that a citation be duly signed and issued, and that a transcript of the record, proceedings, opinion, orders and evidence in the case, duly authenticated, may be transmitted to the Supreme Court of the United States.

THE ARIZONA COPPER COMPANY, LIMITED,
By KIBBEY, BENNETT & BENNETT, &
M. J. EGAN,
Its Attorneys.

And on the same day to-wit: the twenty-second day of January, 1910, came the appellant by its attorneys and filed in the clerk's office of said court in said entitled cause, its certain application for Supersedeas, in words and figures following, to-wit:

Title of Court and Cause.

Comes now the Arizona Copper Company, Limited and asks this court to suspend the injunction granted in this action during the pendency of the appeal of this cause to the Supreme Court of the United States upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the appellee. And it presents, herewith, affidavits of the facts and circumstances
86 relating to the same.

KIBBEY, BENNETT & BENNETT, &
M. J. EGAN,
Attorneys for Appellant.

And on the same day to-wit: the twenty-second day of January, 1910, there was filed in the Clerk's office of said court in said entitled cause certain Affidavits of Paul Heisinger, Norman Carmichael, and Lamar Cobb, copies of which are omitted by direction of attorneys for appellant.

And on the same day to-wit: the twenty-second day of January, 1910, being one of the regular juridical days of the January term of said court, 1910, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, comes Mr. Walter Bennett, attorney for appellant herein, in open court, and gives notice of appeal to the Supreme Court of the United States from the judgment of this Court and the order denying the Motion for Rehearing, and asks the Court to suspend the injunction granted in this action during the pendency of the appeal of this cause to the Supreme Court of the United
87 States upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the appellee.

Upon motion of Mr. Thos. Armstrong Jr., attorney for appellee herein, it is ordered by the Court that he be granted time to oppose suspension of the injunction, and cause continued until two o'clock this afternoon.

And on the same day to-wit: the twenty-second day of January, 1910, being one of the regular juridical days of the January term of said court, 1910, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

The matter of the suspension of the injunction granted in this cause coming on at this time for hearing was argued by Mr. Jos.

H. Kibbey for appellant for the suspension of the injunction, and by Mr. Thos. Armstrong, Jr., for appellee, in opposition thereto, and the matter then taken under advisement by the Court.

On motion of Mr. Thos. Armstrong, Jr., it is ordered by the Court that he be granted until February 12th, 1910, in which to file affidavits, and

88 It is further ordered that appellant herein be granted five days thereafter within which to reply.

And on to-wit: the twenty-seventh day of January, 1910, there was filed in the clerk's office of said court in said entitled cause a certain Affidavit of Norman Carmichael, copy of which is omitted by direction of attorneys for appellant.

And on to-wit: the fifteenth day of February 1910, came the appellant by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain report of J. B. Girand, a Civil and Mining Engineer, and Maps "A" and "B" being maps of Morenci Canon Tailings Dams, and Tailings Dams in Hill's Addition to Clifton, of The Arizona Copper Company, copies of which are omitted by direction of attorneys for appellant.

And on the same day to-wit: the fifteenth day of February, 1910, came the appellee by his attorneys and filed in the clerk's office of said Court in said entitled cause certain Affidavits used in opposition to application for Supersedeas, copies of which are omitted by direction of attorneys for appellant.

89 And on to-wit: the nineteenth day of February 1910, there was filed in the clerk's office of said court in said entitled cause a certain Order suspending injunction, in words and figures following to-wit:

Title of Court and Cause.

The appellant, the Arizona Copper Company, Limited, being represented by Mr. M. J. Egan and Kibbey, Bennett & Bennett, and the appellee being represented by Thomas Armstrong, Jr.

Before the Honorable Edward Kent, Chief Justice of the Supreme Court of the Territory of Arizona:

The above named, the Arizona Copper Company, Limited, a corporation, having prayed an appeal to the Supreme Court of the United States from the decision, order and judgment of the Supreme Court of the Territory of Arizona rendered in the above entitled cause on the 20th day of March, 1909, whereby said Supreme Court modified and affirmed the decision, order, judgment and decree of the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Graham, in said cause, entered in said District Court on the 5th day of November, 1907, whereby it was "ordered, adjudged and decreed that the de-

fendant, The Arizona Copper Company, Limited, its agents,
90 servants and attorneys are hereby perpetually enjoined and restrained from in any wise or in any manner depositing or suffering, or permitting to be deposited, or suffering or permitting to flow into the waters of the said Gila River or into said San Francisco River or said Chase Creek in such manner that they may be carried into or enter into the waters of said Gila River, any slimes, slickens or tailings; this judgment to become operative May First, A. D., 1908, and not prior thereto; and that the said plaintiff do have and recover of said defendant, The Arizona Copper Company, Limited, the sum of $85.30, his costs and disbursements incurred herein;" and it having been shown that the matter in dispute in this cause exceeds the sum of Five Thousand Dollars ($5000), exclusive of interest and costs. It is ordered that the said appeal be and the same hereby is allowed.

And it having by the said appellant been made to appear that since the commencement of this action the said appellant has designed and constructed and put into operation large and expensive settling basins and other means and devices designed and intended to arrest, settle and dispose of the slimes, slickens and tailings from its concentrating and reduction works, and by said means has succeeded in arresting and impounding and disposing of the
91 major portion of the slimes, tailings and debris from its said works, and is at the present time in good faith operating said impounding works, and has agreed to and is proceeding to provide, install and operate other and further means and devices to arrest, impound and dispose of the said slimes, tailings and other debris from its said works:

It is therefore ordered that the operation of said injunction be suspended during the pendency of said appeal, so long as, and upon the condition that the appellant, The Arizona Copper Comapny, Limited, shall in good faith continue to operate and keep in repair the works, plans and devices already designed and put in operation by it to impound and otherwise dispose of the debris from its concentrating and reduction works above mentioned, and shall diligently and in good faith, and as soon as the machinery and other appliances therefor can be obtained, proceed to install and operate such other and further means and devices as are necessary to keep so far as practicably possible the debris from its said works from flowing into the waters of the said Gila River, Chase Creek or the San Francisco River.

And upon the further condition that the said appellant
92 execute an appeal bond in this cause in the sum of Twenty Thousand Dollars ($20,000), conditioned that the said appellant shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make its plea good, and that it shall pay to the said William Allen Gillespie all damages which he may sustain by reason of the suspension of the injunction in this cause.

And for the purpose of keeping this Court advised of the compliance in good faith by the appellant, The Arizona Copper Company,

Limited, with the terms and conditions of this order, Richard Layton is appointed as officer of this Court to inspect the said settling and impounding works of the said appellant and from time to time to report to this Court the condition of such works and the manner and efficiency of their operation, and for such purpose the said officer shall at all times have free access to all of said impounding and restraining works and to every part thereof. Said officer shall be allowed a compensation of One Hundred and Fifty Dollars ($150) per month, commencing March 1, 1910, which sum shall be paid by the said appellant to the Clerk of this Court on the first day of each month for the use of said officer.

This order as to the suspension of said injunction is made
93 subject to revocation or modification by this Court upon a proper showing that its terms and conditions are not being in good faith complied with.

Done at Phœnix, the Capital, this 19th day of February, 1910.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

And on to-wit: the second day of March, 1910, came the appellant by its attorneys and filed in the clerk's office of said court in said entitled cause its certain Appeal and Supersedeas Bond, in words and figures following, to-wit:—

Title of Court and Cause.

Know all men by these presents: That we, The Arizona Copper Company, Limited, a corporation, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto William Allen Gillespie, in the penal sum of Twenty Thousand ($20,000.00) Dollars, for which sum well and truly to be paid unto the said William Allen Gillespie we bind ourselves, our successors and assigns jointly, severally and firmly by these presents.

Sealed with our seals and dated this 26th day of February,
94 1910.

The condition of the above obligation is such that,

Whereas, on the 20th day of March, 1909, the Supreme Court of the Territory of Arizona, by its order and judgment of that date, did modify, and as so modified, did affirm the judgment, order and decree of the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Graham, rendered in said cause on the 5th day of November, 1907, by which said judgment and decree the said Arizona Copper Company, Limited, a corporation, was adjudged to pay to the said William Allen Gillespie the sum of Eighty-five and Thirty-One-hundredths ($85.30) Dollars costs of said action, and by said judgment and decree the said The Arizona Copper Company, Limited, its agents, servants and attorneys are perpetually enjoined and restrained from in anywise, or in any manner depositing or suffering, or permitting to be deposited, or suffering or permitting to flow into the waters of the Gila River,

or into the San Francisco River or Chase Creek, in such manner that they may be carried into or enter into the waters of the Gila River, any slimes, slickens or tailings; and

Whereas, The said The Arizona Copper Company, Lim-
95 ited, has prayed an appeal from said judgment, order and decree of the Supreme Court of the Territory of Arizona to the Supreme Court of the United States, and for a suspension of the said injunction pending said appeal; and

Whereas, An order has been duly entered in said Supreme Court of the Territory of Arizona by Honorable Edward Kent, Chief Justice of said Court, allowing said appeal; and

Whereas, It is further ordered by said court that the said injunction be suspended pending said appeal upon the condition, among others, that the said appellant enter into a bond to the said William Allen Gillespie in the penal sum of Twenty Thousand ($20,000.00) Dollars, conditioned as provided in said order.

Now therefore, If the said The Arizona Copper Company, Limited, shall prosecute its said appeal to effect and shall answer all damages and costs, if it fails to make its plea good, and shall pay to the said William Allen Gillespie all damages which he may sustain by reason of the suspension of the injunction in this cause, then this obligation to be void; otherwise to remain in full force and virtue.

THE ARIZONA COPPER CO., LTD.
NORMAN CARMICHAEL,
General Manager.

96 AMERICAN SURETY COMPANY OF NEW YORK,

[SEAL.] By W. K. JAMES,
Resident Vice-President,

By C. F. AINSWORTH,
Resident Assistant Sec'y.

Approved & accepted both as to form & sufficiency of surety.

THOS. ARMSTRONG, JR.,
Att'y for Appellee.

Approved:

EDWARD KENT,
Chief Justice.

Approved:

F. A. TRITLE, JR., *Clerk.*

And on to-wit: the tenth day of March, 1910, there was filed in the clerk's office of said court in said entitled cause a certain Report of the Inspector of the settling and impounding works of appellant, in words and figures following, to-wit:

THATCHER, ARIZ., *March* 7, 1910.

Hon. Edward Kent.

DEAR SIR: I have just returned from Clifton and have inspected the Arizona Copper Co.'s works. I found their impounding
97 tanks at Clifton and the dam in Morenci Canyon, in much better shape than when I was there in January.

They are going to work now like they meant business.

Mr. Carmichael informs me that his machinery is ordered and on the road. It will be installed as soon as they can do it. So they can take care of the red oxides that are coming in at Clifton. They have their box completed across Morenci Canyon, which makes it much easier to handle their tailings.

R. G. LAYTON.

And on to-wit: the eighteenth day of April, 1910, there was filed in the clerk's office of said court in said entitled cause a certain Report of the Inspector of the settling and impounding works of appellant, in words and figures following, to-wit:

THATCHER, ARIZONA, *April* 1, 1910.

Hon. Judge Kent.

DEAR SIR: As regards to the slimes from the A. C. Co. works, will say, that they have the Morenci Canyon in very good condition, so that they are taking care of every thing.

At Clifton the settling tanks are in fairly good condition. But the red oxides are still flowing into the river. They are
98 working and experimenting, trying to put a machine in that will handle it.

They are working at it all the time, have not yet perfected it. They have their pipe there ready to lay, which will convey this to their settling tanks. Their large pump has been ordered but not shipped yet. It will be a month probably before it reaches here.

I think they are trying to do about the right thing under the circumstances.

I will keep you informed as conditions develop.

Yours truly,

R. G. LAYTON.

And on to-wit: the fourth day of May, 1910, there was filed in the clerk's office of said court in said entitled cause a certain Report of the Inspector of the settling and impounding works of appellant, in words and figures following, to-wit:

THATCHER, ARIZONA, *May* 2, 1910.

Hon. Edward Kent.

DEAR SIR: There is not much change in the tailings proposition, only that the people on Hill's Flat near by where they are impounding the tailings from the Clifton Concentrator, have been
99 preventing the Company from laying their pipe until they will build them a wall to protect their property. This trouble is now all settled and they will commence to lay their pipe right away.

Things are looking pretty well.

Yours truly,

R. G. LAYTON.

And on to-wit: the thirty-first day of May, 1910, came the appellants by their attorneys and filed in the clerk's office of said court in said entitled cause its certain Assignment of Errors, in words and figures following, to-wit:—

Title of Court and Cause.

That Arizona Copper Company, Limited, the appellant in the above entitled cause, assigns for error the following rulings, orders and decrees in said cause, viz:

I.

The Supreme Court of the Territory of Arizona erred in affirming the judgment and order of the District Court of the Third Judicial District of the Territory of Arizona denying the motion of the Arizona Copper Company, Limited, to strike from the plaintiff's complaint that portion thereof pointed out and designated in said motion.

100

II.

The Supreme Court of the Territory of Arizona erred in affirming the judgment and order of the District Court of the Third Judicial District of the Territory of Arizona overruling the demurrer of the defendant, The Arizona Copper Company, Limited, to the plaintiff's complaint.

III.

The Supreme Court of the Territory of Arizona erred in affirming the judgment and decree of the District Court of the Third Judicial District of the Territory of Arizona adjudging and decreeing as follows:

"That the defendant, The Arizona Copper Company, Limited, its agents, servants and attorneys are hereby perpetually enjoined and restrained from in anywise or in any manner depositing, or suffering or permitting to be deposited, or suffering or permitting to flow into the waters of said Gila River, or into said San Francisco River or said Chase Creek, in such manner that they may be carried into or enter into the waters of said Gila River, any slimes, slickens, or tailings."

IV.

The Supreme Court of the Territory of Arizona erred in refusing to reverse the final judgment and decree of the District Court of the Third Judicial District of the Territory of Arizona.

Wherefore the said Arizona Copper Company, Limited, prays that the said Order and Decree of the Supreme Court of the Terri-
101 tory of Arizona affirming the said judgment and decree of the District Court of the Third Judicial District of the Territory of Arizona be reversed, and that this cause be remanded to

the Supreme Court of the Territory of Arizona with directions to reverse the decision and decree of the lower court in said cause.

KIBBEY, BENNETT & BENNETT &
M. J. EGAN,
Attorneys for Appellant.

And on to-wit: the second day of June, 1910, there was filed in the clerk's office of said court in said entitled cause a certain Statement of Facts in words and figures following, to-wit:—

Title of Court and Cause.

The defendant, The Arizona Copper Company, Limited, having prayed an appeal from the judgment and decision of this Court heretofore during the January Term, 1909, thereof rendered and made in this cause, and said appeal having been allowed, and said defendant having also prayed that this court make and certify a finding and statement of facts in this cause to be transmitted and used on said appeal, this court does hereby make and certify
102 the following statement of facts herein, being the facts found by the Trial Court, except as modified herein, viz:

I.

That plaintiff is now, and at all the times hereinafter mentioned has been, a resident of the County of Graham and Territory of Arizona. That the defendant, The Arizona Copper Company, Limited, is a corporation organized and existing under and by virtue of the laws of the Territory of Arizona, with its principal office and place of business at the City of Clifton, County of Graham, and Territory of Arizona.

II.

That the Gila River rises in the Territory of New Mexico, and flows thence through a generally mountainous country through the County of Graham and other counties in the Territory of Arizona in a westerly direction, into the Colorado River at or near the City of Yuma, in the Territory of Arizona.

That the San Francisco River is an affluent of the said Gila River, emptying its waters into said Gila River at or near the City of Clifton aforesaid, and above the head of the Montezuma and other canals hereinafter described.

That Chase Creek is an affluent of the said San Francisco River, emptying its waters into the said San Francisco River above the City of Clifton; that each and all of said streams are public
103 streams within the said County of Graham, and the waters thereof are applicable to the purpose of mining, irrigation, and domestic use.

III.

That the plaintiff is the owner and occupant of about 276 acres of land in the upper Gila Valley, near the town of Solomonsville,

and that said land is naturally desert and unproductive without the application of water thereon by irrigation.

That the predecesors in interest of plaintiff in said land commenced the cultivation to valuable crops of portions of the same by means of water diverted from the Gila River through the Montezuma Canal about the year 1872, and thereafter gradually increased the amount thereof so cultivated until for more than fifteen years last past the whole of said premises has been continually cultivated to valuable crops by means of said waters of the Gila River.

IV.

That the said Montezuma Canal, by and through which plaintiff diverts the water appropriated for use upon said land as aforesaid, at all the times mentioned herein, headed and now heads at a point upon the bank of said Gila River at or near the southwest
104 corner of the northeast quarter of the northeast quarter of Section 17, Township 7 South, Range 26 East, G. & S. R. B. & M., in said Graham County, at a distance of about 25 miles below the confluence of the said San Francisco River and said Gila River. That commencing at said head of the said Montezuma Canal and extending out into and across the said Gila River was at all the times mentioned herein, and now is, maintained a dam for the purpose of diverting the waters of said Gila River into said canal. That said Montezuma Canal is of a capacity sufficient to, and does, divert and carry 3,000 inches of water, miners' measurement, from the said Gila River, and said canal extends out through the farming lands of the valley commonly known and called the Upper Gila Valley, a distance of 13½ miles, all within the said County of Graham. That said canal carries the public waters of said Gila River for the irrigation of more than 3,750 acres of land, to which said water was, and now is, appropriated, diverted, and applied by the owners and occupants thereof for agricultural purposes, and drinking and domestic uses in connection therewith, amongst others, to the lands of plaintiff. That said canal and dam is maintained by the owners of said lands and plaintiff, for the purposes and uses aforesaid.

105 V.

That in the said Upper Gila Valley and County of Graham, and from a point on said Gila River at or near eighteen miles below the confluence of said San Francisco and said Gila Rivers to a point fifty-three miles below said last-named point, numerous irrigation ditches, amongst others said Montezuma Canal, were taken out of said Gila River at various times in and since the year 1872 by divers persons who were then, and are now, the owners and occupants of irrigable lands lying upon either side of said Gila River, and by means of said ditches the public waters of said river have been ever since appropriated, diverted and applied to the irrigation and cultivation of a constantly increasing quantity or irrigable lands so situated under said canals and occupied by persons entitled to

the use of said waters, amongst others this plaintiff, until at the time of the institution of this suit more than twenty-three thousand acres of such lands were so irrigated and cultivated; and the said lands, theretofore desert and unproductive, were reclaimed and were made to, and do now, produce alfalfa, grains, vegetables, melons, fruits, trees, and vines; that at all the times herein mentioned, said ditches have been, and are now, maintained, and said public waters of said Gila River used upon the aforesaid land for the irriga-
106 tion thereof, and the cultivation of valuable crops as aforesaid, and for domestic and drinking purposes in connection therewith. That as a result of the use of said public waters of said Gila River as aforesaid, a rich and prosperous farming community has been established upon the lands aforesaid, supporting the towns of Solomonsville, of Safford, of Thatcher, and others; in all a community of more than eight thousand persons.

VI.

That in the mountains through which the said Gila River and its affluents flow, in the neighborhood of the towns of Clifton, Morenci and Metcalf, within the County of Graham, are large deposits of copper ore, and that several large mining companies, including the defendant, the Arizona Copper Company, Limited, are engaged in the business of mining and reducing said ores; that mining operations on said deposits were commenced by miners about the year 1872 and have been continuously and increasingly prosecuted since that date, and that said mining industry and the farming industry in the Upper Gila Valley in which is situated the town of Solomonsville, were commenced about the same time and have each grown and increased in volume and importance to the present time. That the defendant, The Arizona Copper Company, Limited, and
107 other large mining companies are engaged in the reduction and treatment of copper ore in said mining district near the upper branches and affluents of the Gila River. That for the purpose of reducing and treating the said ores so mined as aforesaid, said defendant has established upon the banks of said San Francisco River and said Chase Creek and upon the sides of the canons debouching into said last-named streams, concentrators of a capacity sufficient to, and which now actually, reduce and treat more than three thousand tons of copper ore each day.

That it has invested a large amount of money in the development of said mining industry and in the installation and equipment of concentrators, smelting and reduction works used in the reduction of the products of said mines; and that the plants of this defendant company now used in said operations represent an investment of about fifteen million dollars. That defendant, in its mining, smelting and reduction of ores gives employment to about 3000 men and that a community of about 12,000 people are dependent for a livelihood upon the operations of the mining works of this defendant and of the other mining companies hereinbefore referred to.

That in the reduction of said copper ores by this defendant
108 said ores are crushed and mixed with water, and that a portion of the slickens, slimes and tailings therefrom finds its way through the creeks, affluents and canals upon which the works of said defendant are situated, into the waters of the Gila River and becomes mingled therewith, and is carried by the waters of said Gila River down to the Upper Gila Valley in which the farming operations of the plaintiff are carried on, and by and through said river and irrigating ditches in the ordinary and necessary course of irrigation, to and upon the cultivated lands of plaintiff, and of others like situated.

VII.

That the Gila River is normally subject to periods of flood and of lower water recurrent several times during each year, due to recurrence of torrential rains alternating with periods without rain or with slow-fall-*y* rains; that during such periods of flood said river carries quantities of sedimentary matter, the product of erosion of the mountains, hills and valleys through which it and its tributaries flow; that this sedimentary matter contains organic fertilizers; that such matter is, at such periods of flood, carried through said irrigating canals in the normal and necessary course of irri-
109 gation, to and upon the lands of plaintiff and upon the cultivated lands of the valley, hereinbefore mentioned, and enhances their fertility, thereby in that respect benefiting said lands; that at such periods of flood the proportion of slickens, slimes and tailings carried by the waters to the whole amount of sedimentary matter so carried is so small as to be negligible in determining the effects of the sedimentary matter upon the cultivated lands. That at the periods of lower water, the water of said river flowed clear and free from sediments prior to the time when such water began to carry slickens, slimes and tailings as herein described, and would continue so to flow clear and free from sediments, but for such slickens, slimes and tailings, and then did and now, but for such slimes, slickens and tailings, would continue to furnish clear water free from sediments to the various canals herein mentioned for the irrigation of the lands of plaintiff and of the other lands herein mentioned; that such clear water free from sediments is more valuable for the purpose of irrigation than water carrying sedimentary matter, whether of the natural products of erosion or of slimes, slickens or tailings; that in about the year 1885 the first concentrator was erected for the reduction of ores in connection with the mining enterprises herein mentioned; that at a time which
110 this Court cannot exactly determine, but some six to eight years before the institution of this action, the waters of the Gila River at other than flood periods, theretofore clear, became discolored by slimes, slickens and tailings and began to deposit such slimes, slickens and tailings through the irrigating ditches herein mentioned in the normal and necessary course of irrigation upon the lands of plaintiff and other lands herein mentioned.

That since the last-mentioned time the quantity of such slimes,

slickens and tailings carried by the said river and so deposited upon said lands of plaintiff and said other lands, continuously increased, until after the institution of this suit; that the said slimes, slickens and tailings so carried upon the said lands of plaintiff and the other said lands consist of finely pulverized rock; are inert; are chemically not injurious to the soil, or to plant life; add nothing of value to the farming lands of said valley for any purpose; are destitute of organic fertilizing material, but contain a small quantity of inorganic fertilizing material of a kind with which the soil of the said lands of plaintiff and other said lands, are, and at the time mentioned herein have been, adequately supplied; that
111 all of said sedimentary matter carried upon said cultivated lands of plaintiff and other said lands, whether the products of erosion, or slimes, slickens and tailings, injuriously affects the said cultivated lands for the purpose of raising crops, in that it becomes deposited in constantly increasing depth on the surface of said cultivated lands, being deposited more heavily and to a greater depth near the points at which the water is immediately applied to said lands for the purpose of irrigation, and becoming progressively thinner as the water passes over the said lands farther from the points of immediate diversion and application; that said deposit of sedimentary matter is injurious to said lands for the purpose of raising crops in several respects: One, in that it elevates the land adjoining the point of immediate application of the said water, thus compelling the taking of the water supply from increasingly high water levels in order to flood the water upon said lands; a second, in that it forms a compact layer over the soil, not readily permeable by water, thus depriving the roots of the plants of the appropriate and necessary irrigation; and a third, in that it packs about the roots and stems of growing plants, thus mechanically choking and burying them to the restriction of their growth and productiveness; that the second named injurious effect is remedial by deep plowing and harrowing, whereby sedi-
112 mentary matter so deposited is mingled with the natural soil; that the most important crop grown by plaintiff and by the cultivators of the other cultivated lands herein referred to, both in the extent of land on which said crop is cultivated, and in the value is of alfalfa, which is a perennial and cannot be plowed without its destruction; that alfalfa reaches its highest productivity at the age of three or four years, and continues at a maximum of productivity, for a lifetime of unascertained duration, in excess of fifteen years; that alfalfa stools at or near the surface of the soil, and that the productivity and thriftiness of the plant is seriously impaired, when the crown at which it so stools becomes covered; that said sedimentary deposits are peculiarly injurious to alfalfa by reason of the fact that they bury the stooling crowns; that the injurious effect of such deposits upon alfalfa may be ameliorated but not obviated by deep harrowing; that the sedimentary deposit upon cultivated soil of slimes, slickens and tailings is more injurious than the natural sediment of erosion (to an extent which the Court can-

not define in a percentage) by reason of the fact that the said slimes, slickens and tailings are much more finely pulverized than the natural sediment of erosion and form a more compact
113 blanket, more nearly impermeable to the passage of water, and when dry, much harder, more cement-like, and more difficult to plow, or harrow; that the said slimes, slickens and tailings are also more injurious to growing plants in their mechanical choking effect than the natural sediment of erosion by reason also of the more fine pulverization of the former and the more compact way in which they become packed on and about the roots and stems of such growing plants; that normally the periods of lower water in the said river come at the times when there is the greatest need of irrigation by growing crops; that for a period of a year or two prior to the institution of this suit the waters of the said river carried such a great volume of slimes, slickens and tailings that layers of such slimes, slickens and tailings, unmixed with other substances, were deposited in some of the irrigating ditches more directly affected thereby and on the soil near the points of immediate application of water therefrom for purposes of irrigation, of a thickness of half an inch or more; that the plaintiff was injured in the loss of the productivity of his fields of alfalfa upon his said lands in the year preceding the filing of this suit, by reason of the sedimentary deposits upon his fields of alfalfa, in an
114 amount which the Court cannot exactly determine, in excess of one thousand ($1,000) dollars; that from the same cause the crops of alfalfa grown upon the other cultivated lands herein referred to during the said year were diminished to an amount and in a value which the Court cannot exactly determine, of many thousands of dollars.

VIII.

The Court further finds that complaints of the effect of said slimes, slickens and tailings were first made by the plaintiff to the said defendant about five years ago, and that thereafter said defendant commenced and thereafter prosecuted the work of arresting the same from entering said Gila River, and that in doing so it has established large and expensive settling works and devised means of carrying off a large proportion of its waste products, and in its said efforts has expended approximately $50,000; that at the time of the trial of this cause about seventy-five per cent of the total waste products of defendant's works theretofore deposited in tributaries of said Gila River were, and now are, arrested, settled and otherwise disposed of, with such result that a large percentage, which the Court cannot determine from the evidence, but fixes as in excess of fifty per cent of the slimes, slickens and tailings
115 theretofore flowing from said works into said river, do not so flow. That at and prior to the institution of this suit, and at the time of the hearing of this cause, other mining companies, including the co-defendants herein, were engaged in the business of mining and reduction of ores upon and near the upper branches and affluents of said Gila River, and contributed from

their reduction works a portion of the slimes, slickens and tailings carried by said river to and upon the lands of plaintiff and other lands herein mentioned.

That after the commencement of this action and before the hearing of this cause the Shannon Copper Company, in consideration of the dismissal of this action as to it, agreed to spare no reasonable effort or expense to minimize the amount of said tailings and waste material from its said works which may find their way into said river, and if possible to do so by any reasonable effort and expense, that it would prevent the flow of any of said tailings and waste material from its said works from flowing into said river, and that said efforts should be made at once, and continued without interruption until the object thereof should be accomplished.

IX.

116 The Court further finds that during the last five years the agricultural lands of the Upper Gila Valley in the vicinity of Solomonville, including the lands of the plaintiff, have greatly increased in market value and selling price, and that that portion of said lands which are set to alfalfa and are known as alfalfa lands have in the last five years increased in value and market price to the same extent as that portion of said lands adapted to and used in the production of cultivated crops.

X.

That the injuries complained of in said complaint are continuous, and constantly increasing. That plaintiff has no adequate remedy at law for the redress of said injuries caused him by said defendant, in this, that the damages caused to plaintiff by the acts of defendant are of a nature not readily susceptible of proof in an action at law for damages, and that said injuries in their ultimate effect are irreparable. That the defendant threatens to, and will, unless restrained by the order of this Court, continue to deposit slimes, slickens and tailings as hereinbefore set forth, to the damage of plaintiff.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

117 And on to-wit: the third day of June, 1910, there was filed in the clerk's office of said court in said entitled cause a certain Report of the Inspector of the settling and impounding works of appellant, in words and figures following, to-wit:

THATCHER, ARIZ., *June* 1, 1910.

Hon. Judge Kent, Phœnix, Arizona.

DEAR SIR: In regards to the tailings proposition there is very little change since last report. The citizens on Hill's Addition have been

holding the Company back from putting in their pipes, but it looks as tho things were settled now.

Mr. Carmichael said he had deposited $5,000 (Five Thousand Dollars) in the bank for the said citizens to use in building a retaining wall.

Yours truly,

R. G. LAYTON.

118 UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the above and foregoing to be a full, true and complete copy and transcript of the record, including the Judgment Roll; Bond on Appeal; Order suspending Judgment; Bond; Opinion; Judgment; Motion for Rehearing; Petition for Allowance of Appeal; Application for Supersedeas; Order Suspending Injunction; Appeal and Supersedeas Bond; Reports of Inspector; Assignment of Errors; Statement of Facts; and all minute entries had and entered of record in a certain cause lately pending in said court, No. 1052, wherein The Arizona Copper Company, Limited, a corporation, was appellant, and William Allen Gillespie was appellee, as the same remain on file and of record in my office, excepting only such parts thereof as have been omitted by direction of attorneys for appellant as not necessary on the hearing of this appeal, and each such omission appears in this transcript with the true reason for such omission stated.

And I further certify that the same constitute the record in said cause.

And I further certify that the attached Citation is the original Citation issued by said Supreme Court.

In witness whereof, I have hereunto set my hand and the seal of said Court, this 21st day of June, A. D., 1910, at Phœnix, Arizona.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR.,
Clerk Supreme Court of Arizona.

119 UNITED STATES OF AMERICA, *ss:*

To William Allen Gillespie:

You are hereby cited and admonished to be and appear at the Session of the Supreme Court of the United States to be holden in the City of Washington, District of Columbia, within sixty days from the date hereof, pursuant to an appeal duly allowed by the Honorable Edward Kent, Chief Justice of the Supreme Court of the Territory of Arizona, and duly filed in the office of the Clerk of said Supreme Court of the Territory of Arizona, wherein The Arizona Copper Company, Limited, is appellant and William Allen Gillespie is the appellee, to show cause, if any there be, why the judgment and decree in said cause mentioned in the said allowance of appeal, should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this seventeenth day of May in the year of our Lord One Thousand Nine Hundred and Ten.

EDWARD KENT,
Chief Justice of the Supreme Court
of the Territory of Arizona.

I, William Allen Gillespie, Plaintiff and Appellee in the above mentioned action, do hereby admit and accept service upon me of the above citation, this 20th day of May, 1910.

WM. A. GILLESPIE.

120 PHOENIX, ARIZONA, *April* —, 1910.

The undersigned Attorney for the appellee William Allen Gillespie in the case of William Allen Gillespie vs. The Shannon Copper Company, et al.—The Arizona Copper Company, Limited, Appellant, do hereby acknowledge service of the above citation on appeal to the Supreme Court of the United States.

Witness my hand this 18th day of May, 1910.

THOS. ARMSTRONG, JR.,
Attorney for Appellee, William Allen Gillespie.

121 [Endorsed:] No. 1052. In the Supreme Court of the Territory of Arizona. William Allen Gillespie, Plaintiff and Appellee, vs. The Arizona Copper Company, Limited, Defendant and Appellant. Citation. Filed May 31, 1910. F. A. Tritle, Jr., Clerk. Kibbey, Bennett & Bennett, Attorneys for Defendant and Appellant.

Endorsed on cover: File No. 22,263. Arizona Territory Supreme Court. Term No. 106. The Arizona Copper Company, Limited, Appellant, vs. William Allen Gillespie. Filed July 18th, 1910. File No. 22,263.